

1 agreement.
 2 A. Right.
 3 Q. What claims are you asking the Court to approve the
 4 settlement of?
 5 A. In claims that might be had by the parties vis-à-vis
 6 each other.
 7 Q. So any and all claims that they have under the Swaps
 8 or the collateral agreement or the service contracts
 9 or any other contracts --
 10 A. Yes.
 11 Q. -- those claims are being resolved by the forbearance
 12 agreement?
 13 A. To the best of my knowledge, that is true.
 14 Q. Okay. And the result of the forbearance agreement is
 15 that the City will be able to perform under the
 16 forbearance agreement without being subject to any
 17 liability to any third party?
 18 A. That is my understanding.
 19 Q. And so will the Swap counterparties, correct?
 20 A. That is my understanding.
 21 Q. It will give you what I'll call a clean closing?
 22 A. As I said earlier this week, it will bring us to
 23 closure and certainty, yes. Earlier today.
 24 Q. That is also one of the values of this agreement to
 25 both and you the Swap counterparties, you the City?

1 A. Right.
 2 Q. Which is that it absolves you for any liability in
 3 connection with the relevant agreements?
 4 MR. SHUMAKER: Objection to form.
 5 BY MR. HACKNEY:
 6 Q. As a result of performance under the forbearance
 7 agreement, correct?
 8 MR. SHUMAKER: Objection calls for
 9 speculation.
 10 A. My understanding is that it provides us with closure
 11 and finality regarding any claims and relationships
 12 that the parties have.
 13 BY MR. HACKNEY:
 14 Q. Okay. And there's no trailing liability?
 15 A. That is correct.
 16 Q. And just for the record, if I asked to you assess the
 17 likelihood of success of all of the different claims
 18 that are being resolved by the forbearance agreement,
 19 you would assert the attorney-client privilege and
 20 refuse to answer?
 21 A. That is correct. I have made no independent
 22 assessment outside of any conversation I would have
 23 had with counsel and my advisors.
 24 Q. Now, Mr. Orr, I'm going to speculate you may have
 25 negotiated a settlement or two in your life as a

1 lawyer.
 2 A. That's a fair statement.
 3 Q. And isn't it also fair -- I will tell you I have as
 4 well, but --
 5 A. Right.
 6 Q. Isn't it common that settlement agreements typically
 7 involve releases of liability by the parties against
 8 one another?
 9 A. It is not uncommon for there to be releases in
 10 settlement agreements.
 11 Q. And I will tell you I actually was racking my brain to
 12 see whether I ever entered into a settlement agreement
 13 that didn't have a release. I couldn't think of one.
 14 Have you ever entered into a settlement agreement that
 15 didn't have a release?
 16 A. Yes.
 17 Q. Okay. You have?
 18 A. Yes, I have.
 19 Q. Okay. Do you know whether the forbearance agreement
 20 contains a release of claims by the parties against
 21 one another?
 22 MR. SHUMAKER: Objection, calls for legal
 23 conclusion.
 24 You can answer.
 25 A. Okay. I'd have to read through it and consult with my

1 A. Right.
 2 Q. Which is that it absolves you for any liability in
 3 connection with the relevant agreements?
 4 MR. SHUMAKER: Objection to form.
 5 BY MR. HACKNEY:
 6 Q. As a result of performance under the forbearance
 7 agreement, correct?
 8 MR. SHUMAKER: Objection calls for
 9 speculation.
 10 A. My understanding is that it provides us with closure
 11 and finality regarding any claims and relationships
 12 that the parties have.
 13 BY MR. HACKNEY:
 14 Q. Okay. And there's no trailing liability?
 15 A. That is correct.
 16 Q. And just for the record, if I asked to you assess the
 17 likelihood of success of all of the different claims
 18 that are being resolved by the forbearance agreement,
 19 you would assert the attorney-client privilege and
 20 refuse to answer?
 21 A. That is correct. I have made no independent
 22 assessment outside of any conversation I would have
 23 had with counsel and my advisors.
 24 Q. Now, Mr. Orr, I'm going to speculate you may have
 25 negotiated a settlement or two in your life as a

1 counsel to make sure. I know the agreement speaks for
 2 itself.
 3 BY MR. HACKNEY:
 4 Q. It does, but as you sit here today, I take it you
 5 reviewed the forbearance agreement in connection with
 6 the preparation for your deposition?
 7 A. Maybe not as in depth as you might think.
 8 Q. Okay. I know you have a lot on your plate.
 9 A. I have a lot on my plate.
 10 Q. But I guess I'm saying are you seriously unaware as to
 11 whether there's a release in the forbearance
 12 agreement?
 13 A. Seriously or not, I think the forbearance agreement
 14 resolved all claims between the parties. Sitting here
 15 today without examining it, I'm not aware as to
 16 whether or not it specifically has a release.
 17 Q. Okay. So the -- whether it's in the forbearance
 18 agreement or in the effect of its approval, it
 19 operates as a release for everyone involved?
 20 A. Yeah. The reality is -- when you asked me the
 21 question before as to whether or not it has a release,
 22 the reality is that to the extent you asked -- I
 23 believe in the motion you asked for assumptions and
 24 9019 settlement that the order might well contain a
 25 release so -- I wasn't trying to be truculent with

1 you. I'm just saying that, yes, the effect of the
 2 approval of the agreement should have that impact.
 3 Q. I'm not going to try to go claim by claim because your
 4 understanding is it releases all claims of the Swap
 5 counterparties, the service corporations, and the City
 6 against one another?

7 A. Yes.

8 Q. Now, the Swap insurers, as part of the forbearance
 9 agreement, they get a release of their insurance
 10 obligations under the Swap in the event the City
 11 directs an optional termination, correct?

12 A. Yes, I believe that's true.

13 Q. And this was one of the things that the City has
 14 touted, which is to say, hey, Swap insurers, pipe down
 15 this is good for you, right?

16 MR. SHUMAKER: Objection to form.

17 A. Yeah, without characterizing, you know, the colloquial
 18 characterization, yes, we think that's a benefit.

19 BY MR. HACKNEY:

20 Q. That's a concept that you've argued in your papers --

21 A. Yes.

22 Q. -- as to why the Swap insurers should be happy?

23 A. Yes.

24 Q. Now, do you understand you -- you have argued that
 25 this is a benefit to the Swap insurers under the

1 under the agreement?

2 A. As a layperson, I really haven't examined it.

3 Q. So don't know one way or the other?

4 A. Don't know one way or the other.

5 Q. Do you have a view as to whether Syncora or FGIC, for
 6 that matter, can sue to enforce the agreement?

7 A. I don't have one way or the other.

8 Q. They may have, they may not have?

9 A. Yeah. I'd probably weigh on the side of they don't,
 10 but I -- I don't have a view one way or the other.

11 Q. And have you considered the possibility that if they
 12 don't have the right to sue to enforce the agreement,
 13 that they also would not have the right to sue to
 14 enforce the release that's in the agreement?

15 MR. SHUMAKER: Objection --

16 A. They might or they might --

17 MR. SHUMAKER: -- calls for a legal
 18 conclusion.

19 A. They might or they might not.

20 BY MR. HACKNEY:

21 Q. And let's be frank. That's not your concern, right?

22 A. Well, to be honest with you, you know, without getting
 23 into whether or not there may be equitable rights,
 24 estoppel, third party intended, unintended beneficiary
 25 rights, things along those lines, what I do know --

1 forbearance agreement, correct?

2 A. Yes, I believe so.

3 Q. Are the swap insurers third party beneficiaries as you
 4 understand it as the signatories to the agreement --
 5 of the agreement?

6 MR. SHUMAKER: Objection, calls for a legal
 7 conclusion.

8 A. Here, I'm not acting as a lawyer as I understand it.
 9 I'll have to decline from answering whether or not
 10 they're third party beneficiaries. As you know,
 11 they're intended beneficiaries, incidental
 12 beneficiaries. A lot of these questions are questions
 13 of fact, so that would draw me into a legal analysis
 14 and I'll stay away from that.

15 BY MR. HACKNEY:

16 Q. Let me -- let me -- let me -- what I'll do then is
 17 I'll ask you your understanding as a layperson --

18 A. Okay.

19 Q. -- because you are -- you can say that you're acting
 20 as a layperson --

21 A. I am.

22 Q. -- so to speak.

23 A. Yes.

24 Q. Okay. As a layperson person, do you have a view one
 25 way as to whether Syncora is a third party beneficiary

1 incidental benefits -- what I do know is the
 2 agreement, and what we've said is it provides a
 3 benefit to the insured.

4 Q. That's right, but you obviously don't represent the
 5 insured, you represent the City?

6 A. I am employed by the governor on behalf of the City,
 7 that is correct.

8 Q. And so if the insurer can't enforce the agreement to
 9 take advantage of the release, that's the insurer's
 10 problem, correct?

11 A. Well, without characterizing whether or not it's their
 12 problem or so, my fiduciary duty runs to the City in
 13 its interest; it does not necessarily run to Syncora.

14 Q. Yeah. Can we agree that you certainly didn't
 15 negotiate into the agreement any specific provision
 16 granting the insurers the right to sue to enforce that
 17 provision?

18 A. I made no instruction to my team to negotiate such a
 19 provision.

20 Q. In entering into the forbearance agreement, did you
 21 consider whether or not the automatic stay would apply
 22 to cash trapping if the City filed for bankruptcy?

23 MR. SHUMAKER: Objection, calls for a legal
 24 conclusion.

25 A. Without getting -- here again, there were discussions

1 because, quite frankly, at the time we were in
 2 negotiating this agreement in June, we were hoping
 3 that this agreement and its announcement was for other
 4 creditors to -- and other stakeholders, including the
 5 labor side, to come in and negotiate additional
 6 agreements. So we may have had discussion about what
 7 the impact, if we filed bankruptcy, would have been,
 8 but, frankly, at this time we were hoping we were
 9 going to get a round of agreements in place.

10 BY MR. HACKNEY:

11 Q. You knew that as of July 15th, when you executed the
 12 forbearance agreement, that bankruptcy was possible?

13 A. Oh, sure. We knew it was possible, yeah.

14 Q. Fair to say that by July 15th, given all the work that
 15 was going on, you were of the view that it was likely?

16 A. No, not really. We had been sued -- the governor and
 17 the treasurer had been sued a few weeks before that.
 18 The following week I believe one union had joined in
 19 that suit and the Monday of the week after that, the
 20 governor and I were sued, and I believe July -- I
 21 don't have a calendar. I believe July 15th was that
 22 Monday.

23 Q. It was.

24 A. Yes. So we signed this agreement and, frankly, even
 25 at that time, because there was a whole lot of things

1 A. No. I -- let's be clear. I think we had them before.
 2 I think we had them around that time because in that
 3 week, when I was sued that Monday, there were
 4 discussions about what they may be and we were signing
 5 this agreement at the time.

6 Q. If I ask you about the specifics of the conversations
 7 you had about whether the automatic stay applied and
 8 the likelihood that it would or wouldn't, you'll
 9 decline to answer those questions on the basis of the
 10 attorney-client privilege, correct?

11 A. Yes, again, today I would have to do that.

12 Q. The one thing I will say that we can agree on, though,
 13 is that if the automatic stay did bar cash trapping,
 14 that would be valuable to the City because at least
 15 during the pendency of the bankruptcy it would then
 16 have access to the casino revenues, correct?

17 A. Well, it's -- here again, it's a hypothetical and
 18 contingent question, but I take your meaning, and what
 19 I would say is I think certainly one of the benefits
 20 of the automatic stay is that you maintain the status
 21 quo and access to cash. There are also provisions
 22 however in the bankruptcy code -- I'm not acting as an
 23 attorney, but I am aware -- of Safe Harbor provisions
 24 related to certain financial instruments and you have
 25 to factor that in as well.

1 going on, there was litigation, there were stays in
 2 place, there were appeals to the state court, it
 3 certainly was possible and we were with doing
 4 contingency planning given the paper, but we have not
 5 made any determination at that point as to whether or
 6 not, excuse me, we were going to file.

7 Q. It was certainly possible enough that it behooved you
 8 to analyze whether the automatic stay might be a way
 9 to get access to the casino revenues, correct?

10 A. Yeah, I don't recall whether or not we did it then or
 11 before or just during that week, but -- but we --
 12 there was some discussion about the impact of the
 13 automatic stay, yes.

14 Q. So is it possible that you did not evaluate the
 15 applicability of the automatic stay in the event of a
 16 bankruptcy prior to executing the forbearance
 17 agreement?

18 MR. SHUMAKER: Objection --

19 A. No.

20 MR. SHUMAKER: -- asked and answered.

21 A. No. What I said is at some point during that time or
 22 even prior we had to have those discussions.

23 BY MR. HACKNEY:

24 Q. You may have had them in advance of July 15th, you may
 25 not have, you just can't remember?

1 Q. And those are?

2 COURT REPORTER: Can you please slow down?
 3 THE WITNESS: I'm sorry.

4 BY MR. HACKNEY:

5 Q. Those are risk factors that might make the automatic
 6 stay not applicable?

7 A. That's correct.

8 MR. SHUMAKER: Objection, calls for a legal
 9 conclusion.

10 A. I was informed without telling specific --
 11 BY MR. HACKNEY:

12 Q. Right.

13 A. -- conversations that those are issues you have to
 14 take into consideration.

15 Q. And so let me try and collapse this if I can. If I
 16 ask you about whether the casino revenues are special
 17 revenues being applied to indebtedness, you will
 18 refuse to answer?

19 MR. SHUMAKER: You can ask him whether he
 20 considered them, but in terms of likelihood of success
 21 or communication between --

22 BY MR. HACKNEY:

23 Q. I'll do it that way.

24 Did you consider whether there were special
 25 revenues that were accepted from the automatic stay

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- 1 under 922(d)?
 2 A. We considered all of these issues including the
 3 interaction 922(d) with 362 and I considered them in
 4 the context with my counsel.
 5 Q. Okay. You considered whether 362(b)(17) exception for
 6 Swap collateral applied?
 7 A. Yes.
 8 Q. Did you consider whether the collateral account --
 9 rather, the gaming revenues were even property of the
 10 estate at all?
 11 A. Yes.
 12 Q. So you considered all those questions.
 13 A. Um-hm.
 14 Q. Your counsel rendered advice to you about the
 15 likelihood, the pros and cons of the arguments, and
 16 you're not at liberty to provide that advice to us
 17 because it would invade the attorney-client privilege?
 18 A. Yes, I believe that's correct.
 19 Q. But I do want to get -- I do want to just get your
 20 agreement that the question is important to at least
 21 one of the benefits of the forbearance agreement which
 22 was the interim access to cash during the optional
 23 termination period.
 24 A. I think the question is relevant.
 25 Q. Yeah.

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- 1 A. Yes.
 2 Q. In fact the optional termination period, it could end
 3 as soon as on September 16th; at the latest it goes to
 4 June 30, 2014, right?
 5 A. Correct.
 6 MR. SHUMAKER: Objection, document speaks
 7 for itself.
 8 A. Yeah, the document --
 9 BY MR. HACKNEY:
 10 Q. Whatever it says --
 11 A. Yeah.
 12 Q. -- that's your understanding?
 13 A. Yes.
 14 Q. So that -- the forbearance agreement -- let's put it
 15 this way, Mr. Orr. The forbearance agreement gets you
 16 access to cash during the optional termination period.
 17 A. Yes, I believe that's true.
 18 Q. If the automatic stay applied, it might get access to
 19 the casino revenue during the whole bankruptcy,
 20 correct?
 21 A. It might.
 22 Q. Yeah. We're talking about different things that you
 23 consider as you're analyzing your options, right?
 24 A. Yeah, correct.
 25 Q. And this is -- this is a potentially important one

- 1 because you might be able to get longer access to cash
 2 from the automatic stay than you were getting from the
 3 forbearance agreement, correct?
 4 A. Here again, that's a contingent it might, but that has
 5 to be drawn up also in discussion of potential risk
 6 that Safe Harbor provision would allow the
 7 counterparties to exercise their rights and therefore
 8 obviate any benefits the City could receive from the
 9 automatic stay.
 10 Q. That's right.
 11 A. So we considered all of those.
 12 Q. So just to be clear, if I ask you about the specific
 13 ins and outs of all those potential arguments,
 14 likelihoods of success and so forth, you will not
 15 answer those questions on the basis of the
 16 attorney-client privilege, correct?
 17 A. That is correct.
 18 Q. Oh, I know. The City recently argued in court against
 19 yours truly that the automatic stay bars the cash
 20 trapping provisions of the collateral agreement. Are
 21 you aware of that?
 22 A. I believe I am, yes.
 23 Q. Yeah. In fact, I think that your spokesman,
 24 Mr. Nowling, may have made statements in the press
 25 about the impact of the judge's rulings. Are you

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- 1 familiar with those statements?
 2 A. I am.
 3 Q. Did the Swap counterparties give their consent to the
 4 City to make those arguments in court?
 5 A. I don't know.
 6 Q. And -- so you don't know whether they did or they
 7 didn't?
 8 A. That is correct.
 9 Q. You understand that as originally designed the Swaps
 10 were designed to hedge against interest rate risk on
 11 the floating COPs?
 12 MR. SHUMAKER: Objection, calls for a legal
 13 conclusion.
 14 MR. JURGENS: Objection to form as well.
 15 A. That is my understanding.
 16 BY MR. HACKNEY:
 17 Q. And I can unpack it if you want. I know we get into
 18 the --
 19 A. That's my understanding.
 20 Q. Yeah, okay. Let's just do basics of interest rate
 21 risk, which is if the interest rates go above the
 22 hedge rate, then now the Swap counterparties have to
 23 pay the difference to the service corporations so that
 24 they can pay the difference to the floating rate COPs,
 25 correct?

<p style="text-align: right;">Page 157</p> <p>1 MR. SHUMAKER: Objection, form. 2 A. That is my understanding. 3 BY MR. HACKNEY: 4 Q. That's how the hedge works. 5 Now, interest rates do not favor the City 6 in the Swaps -- we asked that earlier. 7 A. Right. 8 Q. I will strike that. 9 But more basics of interest rate hedging, 10 so as the interest rates go up and start to approach 11 the hedge, the amount the City owes under the Swap via 12 service corporations goes down? 13 A. That -- that is my understanding. 14 Q. And as it crosses over the hedge line, the service 15 corporation could actually be in the money? 16 MR. JURGENS: Objection to form. 17 A. Yeah, here again, we had the discussion about in the 18 money or not, but to the extent your point is saying 19 that they would benefit more from the hedge than the 20 counterparties would, that is my understanding. 21 BY MR. HACKNEY: 22 Q. When the interest rates get above the hedge line? 23 A. (Nods head). 24 Q. That's right. 25 Okay. Now, when you were entering into the</p>	<p style="text-align: right;">Page 159</p> <p>1 Q. Okay. No disrespect to the fine lawyers at Jones Day, 2 I don't know if I can calculate future interest rates 3 as a lawyer. 4 It was in Miller Buckfire's province to do 5 it. They may have done it in conjunction with Jones 6 Day? 7 A. Yes, yes. 8 Q. Okay. And any review of forward curves or different 9 interest rate implications currently existing in the 10 market would have been done by Miller Buckfire? 11 A. Yes. 12 Q. And your recollection is that it was done and it was 13 something that you considered as part of the decision 14 entering into this agreement? 15 A. I believe so. 16 Q. You're aware, for example, that the Federal Reserve 17 has indicated intent to scale back its monthly bond 18 purchases? 19 A. I heard that. 20 Q. And -- 21 A. Quantitative reasoning -- 22 Q. Yeah. 23 A. Yeah. 24 Q. And you're aware that many people believe that that 25 may lead interest rates to rise; isn't that right?</p>
<p style="text-align: right;">Page 158</p> <p>1 forbearance agreement on July 17th, what steps did you 2 take personally to evaluate future -- I'm sorry. I 3 misspoke, didn't I? 4 A. Yeah. 5 Q. When you entered into the forbearance agreement on 6 July 15th -- 7 A. Right. 8 Q. -- what steps did you take prior to that time to 9 evaluate future interest rate moves? 10 A. Any discussions in those -- that regard would have 11 been with our investment bankers and generally with 12 our attorneys. What I'm trying to think of is were 13 there any discussions that I had with Miller Buckfire 14 which would not have been confidential in that regard. 15 I don't think that there were. What I can say is that 16 we evaluated the potentiality of the -- of the 17 interest rate fluctuation as indexed to LIBOR going up 18 or down, but I think most of those, if not all of 19 them, were in communications with one or more of my 20 attorneys. 21 Q. And when you say we evaluated the interest rate 22 fluctuations, that would have been tasked to Miller 23 Buckfire to do? 24 A. Yes, Miller Buckfire in conjunction with folks from 25 Jones Day. Yeah, sure.</p>	<p style="text-align: right;">Page 160</p> <p>1 A. Yes. 2 Q. Okay. Did you analyze the likelihood that the 3 interest rates would rise or was that also tasked to 4 Miller Buckfire? 5 A. I didn't do it independently. That would have been 6 tasked to Miller Buckfire. 7 Q. And if I asked what that analysis showed, I would have 8 to ask Mr. Buckfire that? 9 A. Yes, you would. 10 Q. Okay. 11 A. Yes, you would. 12 Q. Let me ask you about -- in the motion to assume the 13 forbearance agreement, the City states that it has 14 examined whether there are viable actions to challenge 15 the Swap contracts. Do you recall that? 16 A. Yes. 17 Q. Under what theory could the City challenge the 18 validity of the Swap contracts? 19 A. Any theories that we discussed -- I'll give you two 20 answers. One, many of the theories, my understanding 21 is and somebody -- I haven't read all of the 22 objections, but I've read some of them. Some of the 23 objections in this case have discussed some of those 24 theories. 25 Two, any theories which we would have</p>

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1 examined, either independently or in the context of
 2 reviewing and handicapping the probability of success
 3 of some of the objections, would have been done with
 4 counsel.

5 Q. And so you'll refuse to describe both the theories and
 6 their likelihood of success because it would invade
 7 the attorney-client privilege; is that correct?

8 A. Yes. Unfortunately, yes.

9 Q. If I asked you what likelihood of success the City
 10 attributes to an action seeking to declare the Swaps
 11 invalid, you'll decline to answer that on the
 12 attorney-client privilege?

13 A. Yes.

14 Q. Can we agree that if the Swaps are not valid, it
 15 wouldn't make sense for you to enter into the
 16 forbearance agreement?

17 A. No, not necessarily. There may be other prudential
 18 reasons that the City might want to bring closure
 19 and certainty is access to its cash flow irrespective
 20 of the probability that the Swaps are valid or not
 21 valid.

22 Q. In your proposal for creditors on June 14, 2013, you
 23 said that the City has identified certain issues
 24 related to the validity and/or enforceability of the
 25 COPs --

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1 Q. Okay. And you'll assert the attorney-client privilege
 2 as a protection against describing the invalidity of
 3 the COPs analysis?

4 A. Yes, because I did no independent analysis.

5 Q. Has the City completed its investigation into this
 6 issue?

7 A. No. The City's investigation into a number of things
 8 are ongoing.

9 Q. Okay. And this is one of them?

10 A. This is one of them, yeah.

11 Q. Okay. So the City hasn't reached a conclusion on this
 12 subject because it hasn't concluded its investigation
 13 into the subject, correct?

14 A. It -- I think that's fair, yes.

15 Q. And has the City considered whether the service
 16 agreements between the service corporations and the
 17 City are lawful?

18 A. I don't recall if we looked into that.

19 Q. So that's one that you --

20 A. I just don't recall if that was one.

21 Q. You may have investigated, you may have not?

22 A. Correct. I don't recall that one.

23 Q. If you have investigated, do you know if the
 24 investigation has concluded or do you not know?

25 A. No. If we had investigated or are investigating it,

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1 A. Yes.

2 Q. -- that may warrant further investigation.

3 A. Yes.

4 Q. Do you remember that?

5 A. Yes.

6 Q. I'm saving us from having to go through that --

7 A. Yeah, yeah. No. I remember.

8 Q. What issues has the City identified?

9 MR. SHUMAKER: Again, I'm going to caution
 10 the witness --

11 A. Yeah.

12 MR. SHUMAKER: -- if this is going to
 13 reveal attorney-client communications to not answer.
 14 Subject to that, you can answer.

15 A. Here again, there would be no issues that -- and I
 16 hate to keep saying this. There'd be no issues that I
 17 independently would have identified because I'm trying
 18 very hard not to act as a lawyer. I would have only
 19 identified those issues and had discussions of them in
 20 consultations with my attorneys. So whether there are
 21 issues such as void ab initio, fraud, any of the other
 22 issues that typically go to contracts, I would only
 23 have had those discussions with counsel, so
 24 consequently I can't speak to this.

25 BY MR. HACKNEY:

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1 my understanding it would not have been concluded.

2 Q. Okay. So much like with the COPs, generally the
 3 validity of the service contracts with the City is a
 4 subject of ongoing investigation that has not yet
 5 concluded.

6 A. It may be the subject of ongoing investigation which
 7 has not yet concluded.

8 Q. Okay. If I asked you how either of those two
 9 investigations, the one into the COPs validity or the
 10 one into the service contracts validity, impacted your
 11 decision to enter into the forbearance agreement, you
 12 will decline to answer because it would tend to reveal
 13 attorney-client communications?

14 A. For all the reasons we discussed today, the -- yes, I
 15 would have to.

16 Q. Mr. Orr, let me ask you about under section 803 of the
 17 service contracts --

18 A. Yeah.

19 Q. -- I'm going to save us both from having to go through
 20 them --

21 A. Yeah.

22 Q. -- so I'll represent to you what it relates to and see
 23 if you've heard of it.

24 A. Okay.

25 Q. Okay?

1 Under section 803 of the service contracts
 2 payments by the City to the service corporations are
 3 classified according to a waterfall.
 4 A. Um-hm.
 5 Q. Have you heard of this waterfall?
 6 A. Yes.
 7 Q. Okay. Did you evaluate whether there were any claims
 8 that any parties to the structure might have against
 9 one another if the forbearance agreement leads to the
 10 payment of monies outside of the waterfall?
 11 A. I assume you're alluding to prioritization or
 12 subordination in claims along those regards, and the
 13 answer: I think there probably was, but, here again,
 14 I would -- I did not do it independently. It would
 15 have been done by my counsel.
 16 Q. Okay. So you can't tell me the fruits of the analysis
 17 or the City's position on the likelihood of success on
 18 the issue because it's protected by the
 19 attorney-client --
 20 A. That is --
 21 Q. -- privilege?
 22 A. -- correct.
 23 Q. If I ask you how it impacted your decision to enter
 24 into the forbearance agreement, you'd also not be able
 25 to answer that on the basis of the attorney-client

1 privilege?
 2 A. That is correct. In addition, that's part of the
 3 deliberative process.
 4 Q. Have you analyzed whether or not COP holders might
 5 have claims against the Swap counterparties if the
 6 City exercises the optional termination right?
 7 A. There -- have we analyzed it? The answer is yes, I
 8 believe so.
 9 Q. Okay. What's the result of that analysis?
 10 A. Here again, any discussion would have been caught up
 11 in discussions I would have had with my counsel in
 12 that regard, so I decline to answer the question.
 13 Q. Okay. Have you analyzed whether those potential
 14 claims may have an impact on whether the Swap
 15 counterparties go forward with the optional
 16 termination amount -- optional termination?
 17 A. I don't recall if we did that specific analysis. I --
 18 I think that was probably caught up in the whole
 19 universe of analyses of potential claims, pros and
 20 cons analyses, but I don't recall that one
 21 specifically.
 22 Q. We've just been talking now about the COPs. We've
 23 talked about the Swaps a lot. I'm going to for a
 24 moment reference the 2006 COPs Swap transaction
 25 documents.

1 A. Okay.
 2 Q. Do you know generally what I mean when I say that?
 3 A. Yes. The original documents by which the City
 4 borrowed money, 1.4 billion, for the unfunded
 5 actuarial liability --
 6 COURT REPORTER: For the --
 7 A. For the unfunded actuarial liability involve -- the
 8 organic documents.
 9 BY MR. HACKNEY:
 10 Q. That is exactly correct. And, to name a few, there
 11 are the service contracts, the contract administration
 12 agreement, the trust agreement, and the master and --
 13 and amended Swap agreements, correct?
 14 A. Yes.
 15 Q. You've heard of all of those?
 16 A. Yes.
 17 Q. And there are multiple versions of them?
 18 A. There are multiple versions of them.
 19 Q. For example, there are two service contracts --
 20 A. That's right.
 21 Q. -- because there are two service corporations.
 22 A. That's right.
 23 Q. Now, your understanding is that some of these
 24 documents were amended in 2009 in connection with the
 25 addition of the collateral agreement to the package,

<p style="text-align: right;">Page 169</p> <p>1 have no reason to believe otherwise.</p> <p>2 Q. I believe the City ordinance describes this as all one 3 transaction.</p> <p>4 A. Right.</p> <p>5 Q. Do you have a basis to dispute it?</p> <p>6 MR. SHUMAKER: Objection, calls for 7 speculation --</p> <p>8 A. Yeah.</p> <p>9 MR. SHUMAKER: -- foundation.</p> <p>10 A. Yeah, I have no basis to dispute it. Yeah.</p> <p>11 BY MR. HACKNEY:</p> <p>12 Q. You also know -- I know that you haven't familiarized 13 yourself with the documents.</p> <p>14 A. Right.</p> <p>15 Q. We talked about that earlier.</p> <p>16 A. Right.</p> <p>17 Q. You took a look at them. You know that they all refer 18 to one other and relate to one another.</p> <p>19 MR. SHUMAKER: Objection to the extent it 20 calls for a legal conclusion.</p> <p>21 MR. JURGENS: Object to form.</p> <p>22 A. Yeah, if -- without drawing any legal meaning to the 23 concept that they all refer to one another, I believe 24 that they do.</p> <p>25 BY MR. HACKNEY:</p>	<p style="text-align: right;">Page 171</p> <p>1 documents, the collateral agreement from 2009, and the 2 forbearance agreement are all documents that relate to 3 the same subject matter?</p> <p>4 A. Without drawing a legal conclusion, I believe in a 5 broad sense it's fair to say that they relate to the 6 same subject matter, meaning the Swaps.</p> <p>7 Q. Does the forbearance agreement amend any of the 8 provisions in the 2006 COPs or Swap transaction 9 documents?</p> <p>10 MR. SHUMAKER: Objection, document speaks 11 for itself.</p> <p>12 A. Yeah. I want to be very careful here. In addition to 13 the document speaks for itself, I don't want to draw a 14 relationship between the COPs document, which is 15 separate, to the Swaps document.</p> <p>16 When I said they relate broadly to the 17 subject, to the extent COPs were money borrowed to try 18 to fund a pension obligation, and the Swaps were in 19 place as a hedge against the interest rate 20 fluctuations in those documents, and the collateral 21 agreement 2009 was a document that was meant to 22 address defaults that had occurred in relation to the 23 Swaps document, and this document was meant to address 24 the Swaps, they relate to that same subject area, but 25 I don't want to have my testimony suggest that there's</p>
<p style="text-align: right;">Page 170</p> <p>1 Q. Now, the forbearance agreement that you just signed on 2 July 15th, that also references the 2006 transaction 3 documents, correct?</p> <p>4 A. I believe so.</p> <p>5 Q. Okay. In fact, doesn't it borrow certain terms from 6 some of those documents?</p> <p>7 A. Without -- yeah, without reviewing the 2005 and 2006 8 documents or spending time here today reading through 9 this agreement, I believe that's accurate.</p> <p>10 Q. Okay. I will represent to you that I have reviewed it 11 and that it does --</p> <p>12 A. Right.</p> <p>13 Q. -- but I take your answer.</p> <p>14 A. Right.</p> <p>15 Q. The -- do you know that one of the things that the 16 City agreed to do under the forbearance agreement is 17 that during the optional termination period --</p> <p>18 A. Right.</p> <p>19 Q. -- the City won't try to seek to invalidate any of the 20 2006 transaction documents?</p> <p>21 A. I believe that's true.</p> <p>22 Q. Okay. That's one piece that's big enough that you're 23 familiar with?</p> <p>24 A. Yeah, I believe that's true.</p> <p>25 Q. So is it fair to say that the 2006 transaction</p>	<p style="text-align: right;">Page 172</p> <p>1 a legal relationship between the COPs and the Swaps 2 document as relates to this agreement, forbearance and 3 optional termination agreement.</p> <p>4 BY MR. HACKNEY:</p> <p>5 Q. So as you sit here today, is your answer that you 6 don't know if the forbearance agreement amends any of 7 the 2006 COPs Swap transaction documents? It may, it 8 may not, you don't know?</p> <p>9 A. That is -- that is correct. I'm not going to draw a 10 legal conclusion.</p> <p>11 Q. Yeah, and I'm not going to try to drive you to one.</p> <p>12 A. Okay.</p> <p>13 Q. I am asking questions as in your role as a layperson 14 who did execute the document.</p> <p>15 A. Right.</p> <p>16 Q. I understand the lawyers are going to do what they do, 17 okay, but there is as a aspect of this where it's -- 18 your understanding as the guy who signs on it --</p> <p>19 A. Right.</p> <p>20 Q. -- can also be relevant?</p> <p>21 A. That's right. My understanding is what this agreement 22 does -- it's a forbearance agreement, and to the 23 extent it has a provision in it that reverts back to 24 the status quo ante if -- if the deal's not done, I 25 don't want to draw any legal conclusion if there's an</p>

1 amendment that exists after that process.

2 Q. Okay.

3 A. That's why I'm being hesitant.

4 Q. So you just don't know one way or the other as you sit
5 here today the impact the forbearance agreement has on
6 the other agreements?

7 A. With regard to an amendment, that's correct.

8 Q. Okay. Is it your understanding that the 2006 COPs
9 Swap transaction documents retain their vitality as
10 legal agreements to the -- of the parties thereto?

11 A. It's my understanding that they have whatever vitality
12 they have according to their terms.

13 Q. Okay. So all the rights that all the parties to the
14 COPs Swap transaction documents had before the
15 forbearance agreement, they still have today?

16 A. No. Here again, you're -- I just want to be careful.
17 It seems that you're trying to conflate COPs with
18 Swaps, and I want to be careful.

19 Q. Well, I want to say all of them, but if you say no,
20 it's different on these, some rights have changed, but
21 on these everyone's rights are preserved, that's okay.

22 A. Yeah, I want to be careful as far as saying what their
23 rights are because I do believe those are legal
24 questions, and in fact some of them are being
25 litigated in the various piece of litigation that are

1 A. I'll leave that to the attorneys.

2 Q. At the time that you entered into the forbearance
3 agreement, were you aware that the Swap insurers had
4 the right to consent to waivers, modifications or
5 amendments of the Swap agreement and the collateral
6 agreement?

7 MR. JURGENS: Objection to form.

8 A. I was aware that some of the Swap insurers had
9 asserted they had those rights. I had drawn no
10 independent legal conclusion as to whether or not they
11 did.

12 BY MR. HACKNEY:

13 Q. Okay. So you didn't know whether they were right or
14 they were wrong --

15 A. Correct.

16 Q. -- at the time you executed the agreement?

17 A. I had had discussions with my attorneys about whether
18 they were right or they were wrong, but I had no
19 independent conclusions.

20 Q. And you won't disclose the subject of your counsel's
21 communications?

22 A. I cannot disclose that subject because that's an
23 attorney-client communication.

24 Q. Did you evaluate when you entered into the forbearance
25 agreement, whether the act of entering into it would

1 going on.

2 Q. Hence this deposition?

3 A. Hence this deposition. So I want to be very careful
4 that I not give any testimony that would implicate a
5 legal conclusion with regard to those documents.

6 Q. And I'm not asking for a legal conclusion. I'm just
7 asking for your understanding as the signatory --

8 A. Right.

9 Q. -- as to whether the COPs Swap transaction documents,
10 whether all the parties preserved their rights under
11 those documents, notwithstanding the forbearance
12 agreement, or whether the forbearance agreement
13 changes the parties' rights under those documents.

14 A. And that's why I'm being careful because my
15 understanding of the forbearance agreement is that it
16 imposed upon the City, service corporations and the
17 counterparties certain obligations to forebear. I'm
18 not going to draw a legal conclusion as to whether or
19 not that amended any rights or changed any rights
20 under the original documents.

21 Q. It may have, it may not have?

22 A. It may. It may have not. I'll leave that to the
23 attorneys.

24 Q. It may constitute a waiver, it may not constitute a
25 waiver, you'll leave that to the attorneys?

1 multiply the amount of litigation that the City might
2 face?

3 A. I think it's fair to say that we considered whether it
4 might. Any time you're in a transaction I think you
5 consider whether it might suborn litigation, yes.

6 Q. And what were your conclusions on this subject?

7 A. Here again, any conclusions we would have had would
8 have been in this whole air of discussions with my
9 counsel. What I can say, without saying what my
10 conclusions specifically were of the probability that
11 it might create additional litigation, is I thought
12 that overall it was in the best interest of the City
13 to enter into agreement.

14 Q. But you won't disclose to me your communications with
15 your counsel about whether this might multiply the
16 amount of litigation?

17 A. That is correct. Multiply, increase, whatever.

18 Q. And have you -- did you evaluate whether performing
19 under the forbearance agreement, performing -- and by
20 that I mean exercising the option.

21 A. Right.

22 Q. Whether -- let me say it again.

23 Have you evaluated whether exercising the
24 option under the forbearance agreement might subject
25 the City to additional liability?

1 A. Here again, all of these issues regarding potential of
 2 contingent claims, additional litigation, the
 3 advisability of entering into the agreement,
 4 considering that we were in litigation, and as I said
 5 before there may have been litigation threats made
 6 additionally, were taken into consideration in
 7 consultation with my counsel.

8 Q. But you can't disclose those communications?

9 A. They are attorney-client communications.

10 Q. All right. Let me ask you some questions about the
 11 proposed order which I've marked.

12 A. Okay.

13 MR. HACKNEY: You know what? We've got a
 14 five-minute tape coming up and maybe since we're about
 15 to move to a new section, I'll propose a restroom
 16 break.

17 THE WITNESS: Okay. That's fine.

18 VIDEO TECHNICIAN: The time is 11:35 a.m.

19 This marks the end of tape number 2. We are off the
 20 record.

21 (Recess taken at 11:35 a.m.)

22 (Back on the record at 11:51 a.m.)

23 VIDEO TECHNICIAN: We are back on the
 24 record at 11:51 a.m. This marks the beginning of tape
 25 number 3.

1 in a form that's satisfactory --

2 A. Yes.

3 Q. -- to the Swap counterparties --

4 A. I understand.

5 Q. Yeah.

6 A. I need to be clear. Obviously I've reviewed and read
 7 and signed the forbearance agreement. I reviewed the
 8 motion. I just don't recall whether or not I reviewed
 9 the order.

10 Q. Okay.

11 A. I may have because it was probably attached to the
 12 motion. I just don't have an independent recollection
 13 of it.

14 Q. Let's try and make sure we understand the potential
 15 significance of the order --

16 A. Sure.

17 Q. -- and then we're going to go through it --

18 A. Sure.

19 Q. -- even though you haven't read it.

20 Do you understand the Swap counterparties
 21 and the City and the service corporations -- there's a
 22 provision in the forbearance agreement that talks
 23 about the fact that you need to get an order
 24 entered --

25 A. Sixty days.

1 MARKED FOR IDENTIFICATION:

2 DEPOSITION EXHIBIT 4

3 11:51 a.m.

4 BY MR. HACKNEY:

5 Q. Let me hand you what I've marked as Orr Exhibit 4.

6 MR. SHUMAKER: Are we going out of order?

7 MR. HACKNEY: Yes. These were pre-marked
 8 and I must have dropped an exhibit here or there.

9 BY MR. HACKNEY:

10 Q. Do you have Orr Exhibit 4 in front of you, sir?

11 A. Yes, I do.

12 Q. So, Mr. Orr, I'll represent to you that this is the
 13 proposed order that your counsel submitted along with
 14 the motion.

15 MR. HACKNEY: Oh, sorry.

16 BY MR. HACKNEY:

17 Q. Do you understand that?

18 A. Yes. Yes, I do.

19 Q. Did you review this order prior to its being submitted
 20 along with the motion?

21 A. I don't think I did.

22 Q. Okay. Let me tell you that this order is actually of
 23 some importance to the forbearance agreement.

24 A. Um-hm.

25 Q. And that's because if you don't get an order that is

1 Q. -- that's mutually agreeable.

2 A. Yes.

3 Q. And that was the 60-day time period.

4 A. Yes.

5 Q. And we can find the specific provision, but --

6 A. Yes.

7 Q. -- you know what I'm talking about.

8 A. Yes, I do.

9 Q. Okay. So the form of the order is important.

10 A. Um-hm.

11 Q. Is that a yes?

12 A. Yes.

13 Q. And it's important because if the order changes
 14 materially, it might arguably give the Swap
 15 counterparties the right to declare an end to the
 16 termination period.

17 MR. SHUMAKER: Objection to the form, calls
 18 for a legal conclusion.

19 A. Here again, without making a legal assessment, I
 20 understand your meaning that we -- we have an
 21 obligation in the City to make sure the order is in a
 22 form that is mutually agreeable to the parties.

23 BY MR. HACKNEY:

24 Q. And this is it, right?

25 A. That is the proposed order.

1 Q. And this one, you know, is mutually agreeable to the
2 parties.
3 A. I believe that it is, yes.
4 Q. I mean, you may not have negotiated it --
5 A. Correct.
6 Q. -- personally, but it's your expectation that people
7 acting on your behalf then went to make sure that the
8 proposed order was mutually agreeable to the Swap
9 counterparties?
10 A. That is correct.
11 Q. Okay. Now, if the Court -- you understand that in
12 bankruptcy sometimes the Court enters an order that's
13 different from the one that was proposed.
14 A. Yes. I think the judge has done that on many
15 occasions in this case.
16 Q. Yes. And so you understand the judge is the one who
17 ultimately decides what the order says.
18 A. The judge wears the robe.
19 Q. That's right. Now, the judge, it's possible he may
20 materially change some of the provisions of this
21 order. Do you understand that?
22 A. Yes. It is possible that the judge may change the
23 order.
24 Q. And I'm not going to ask you to commit to a position
25 as to whether you would lose your rights, but it at

1 A. Yes. Here again, it's speculative, in my -- but I
2 don't anticipate that experience. In my experience
3 most judges are -- my experience is that many judges
4 are very careful not to undermine the underlying
5 agreement by the order that's entered.
6 BY MR. HACKNEY:
7 Q. So we can agree, though, that this order is an
8 important part of the forbearance agreement, correct?
9 A. Yes. I think the order is relevant to the forbearance
10 agreement.
11 MR. JURGENS: Objection, form.
12 BY MR. HACKNEY:
13 Q. And it's important to it?
14 MR. SHUMAKER: Objection to form.
15 A. I think it's a -- yes.
16 BY MR. HACKNEY:
17 Q. Let me ask you about some of the specific provisions
18 in the order.
19 A. Okay.
20 Q. Let me just say real quick, do you know who negotiated
21 this order with the Swap counterparties?
22 MR. JURGENS: Objection, form.
23 A. I assume it was my counsel. I don't know who in
24 particular.
25 BY MR. HACKNEY:

1 least raises the risk that if there's a material
2 change to the proposed order, the Swap counterparties
3 might be able to say that's not the order that we
4 mutually negotiated in advance of the motion so in my
5 view you haven't obtained the mutually negotiated
6 order.
7 MR. SHUMAKER: Objection, form, foundation.
8 BY MR. HACKNEY:
9 Q. That's a risk?
10 MR. SHUMAKER: Sorry. Objection to form,
11 foundation, calls for speculation.
12 A. Yeah. It is somewhat speculative, and I'd have to say
13 that risk has to be mitigated by the fact that I would
14 hope and anticipate that any proposed revisions to the
15 order would be discussed with the Court under the
16 guise of the obligations that the parties have to
17 reach a mutually agreeable order.
18 BY MR. HACKNEY:
19 Q. Okay. But if the Court enters an order that is not
20 mutually agreeable to the City and the Swap
21 counterparties, that could give the Swap
22 counterparties the right to terminate the optional
23 forbearance period?
24 MR. SHUMAKER: Objection, calls for
25 speculation.

1 Q. Did you -- but did -- did you approve the form of this
2 order before it was submitted for the City?
3 A. As I said, I looked at the motion and the order was
4 probably attached to the motion. I just don't
5 remember looking at the order specifically. What I
6 remember is, after we reached the agreement in
7 principle and signed the forbearance agreement, having
8 discussions without speaking to them, my counsel,
9 okay, was -- let's document the agreement and get the
10 motion filed.
11 Q. Do you know who -- do you know whether anyone
12 approached the service corporations to get their views
13 on the order?
14 A. I do not.
15 Q. You certainly didn't?
16 A. No.
17 Q. And let me just tie this up for a record because I was
18 asking it colloquially, but it's under section 1.3(j)
19 of the forbearance agreement. The City needs to
20 obtain a final and non-appealable order on its motion
21 before September 16th, 2013 or else the Swap
22 counterparties have the right to terminate the
23 forbearance agreement; isn't that correct?
24 A. Yeah.
25 MR. SHUMAKER: Objection to the summary.

<p style="text-align: right;">Page 185</p> <p>1 A. Yeah. The agreement speaks for itself and there are 2 other provisions in there, but the net effect is that 3 you have to do -- obtain the order within 60 days 4 and --</p> <p>5 BY MR. HACKNEY:</p> <p>6 Q. Yeah.</p> <p>7 A. -- I believe that's -- if you represent that's the 8 correct date, then I have no reason to disagree.</p> <p>9 Q. And there are actually two elements to this here. One 10 of them is that, whatever the order says, it has to be 11 final and unappealable by September 16, correct?</p> <p>12 MR. SHUMAKER: Objection, document speaks 13 for itself.</p> <p>14 A. I'll have to rely on the documents speaking to itself 15 because without going through the whole -- I do recall 16 that there was an obligation that the order be a final 17 order. I don't recall specifically the -- the 18 unappealable aspect of it. I do -- I do see in J that 19 there's a 60-day provision going forward.</p> <p>20 BY MR. HACKNEY:</p> <p>21 Q. And do you see it says final and unappealable in J?</p> <p>22 A. I'm sorry, I'm looking through it.</p> <p>23 Q. No, that's okay. You what, the court order 24 definition?</p> <p>25 A. Yeah. It doesn't say it in J as defined in 2.1(d),</p>	<p style="text-align: right;">Page 187</p> <p>1 whether they will extend that 60-day deadline we were 2 just discussing?</p> <p>3 A. I have not had any discussions. I am unaware as to 4 whether or not any of my representatives have.</p> <p>5 Q. You haven't directed them to have any, correct?</p> <p>6 A. No, not directly.</p> <p>7 Q. It's correct that you have not directed them?</p> <p>8 A. It is correct -- it is correct that I have not 9 directed them, but generally, just so we have an 10 understanding here, once the forbearance agreement was 11 reached, my counsel and representatives have all the 12 authority necessary to do what's required to get the 13 order entered.</p> <p>14 Q. Okay. Well, let me ask it this way, which is, there 15 are a number of provisions that are in this order that 16 I -- I guess I'm maybe having the sense that you're 17 not intimately familiar with as you sit here today; is 18 that correct?</p> <p>19 A. Yes, I know generally what the provisions of the order 20 are. I know that the motion speaks to both the 21 assumption and the 9019 agreement and their different 22 principles, but the specific inner workings of the 23 order, I will defer to my counsel on those.</p> <p>24 Q. Let me ask you about some of them then. Look on the 25 page 3 at E which is entitled Consent to Use of Casino</p>
<p style="text-align: right;">Page 186</p> <p>1 and that's what I was looking. Unfortunately I -- I 2 remembered it was in 2. It's D. It's 2.1(d).</p> <p>3 Q. And you --</p> <p>4 A. It says obtain entry of a final and unappealable 5 order, yeah.</p> <p>6 Q. Are you aware that that's actually not possible as we 7 stand here today under the rules of the bankruptcy 8 code?</p> <p>9 MR. SHUMAKER: Objection, calls for 10 speculation and a legal conclusion.</p> <p>11 A. Yeah, here again, since I'm not acting as an attorney, 12 I'm going to defer from asking (sic) that question. I 13 do understand that there are time frames involved 14 under the bankruptcy code and under the rules as to 15 whether or not they can occur.</p> <p>16 BY MR. HACKNEY:</p> <p>17 Q. So you don't know whether or not it's -- it's 18 potentially impossible for the City to comply with 19 this --</p> <p>20 A. Yeah, I would --</p> <p>21 MR. SHUMAKER: Same objection.</p> <p>22 A. I would not opine as to whether or not it's possible.</p> <p>23 BY MR. HACKNEY:</p> <p>24 Q. Have you or your representatives had any 25 communications with the Swap counterparties regarding</p>	<p style="text-align: right;">Page 188</p> <p>1 Revenues.</p> <p>2 A. Um-hm. Um-hm.</p> <p>3 Q. And it contains a finding that says, "Pursuant to 4 section 1.2 of the forbearance agreement, UBS AG and 5 MLCS consent to the City's use of the casino revenue 6 as set forth in the forbearance agreement."</p> <p>7 Do you see that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. And then it says, "The consent of the UBS AG and MLCS 10 will allow the City immediate access to its casino 11 revenue as set forth in forbearance agreement and no 12 other or further consents are required."</p> <p>13 Do you see that?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Okay. Is this an important part of the proposed 16 order?</p> <p>17 MR. SHUMAKER: Objection to form.</p> <p>18 A. Well, first, the document speaks for itself. Two --</p> <p>19 BY MR. HACKNEY:</p> <p>20 Q. It doesn't speak for itself in terms of whether it's 21 important.</p> <p>22 A. Well, let me respond. Two, to the extent this is an 23 order into a motion, it -- as we had discussed earlier 24 today, it's important that we have unfettered access 25 to the casino revenue; and, three, I do think this is</p>

- 1 a central aspect of the forbearance agreement.
- 2 Q. Okay. If the Court refuses to grant the relief
3 specified here, will the Swap counterparties have the
4 right to terminate the forbearance agreement in your
5 view?
- 6 MR. SHUMAKER: Objection, calls for a legal
7 conclusion.
- 8 You can answer.
- 9 A. Yeah, they'll have whatever rights they have under the
10 forbearance agreement which might include termination.
- 11 BY MR. HACKNEY:
- 12 Q. Take a look at paragraph G, arms' length agreement.
13 The forbearance agreement was negotiated at arms'
14 length and in good faith by all parties, and it goes
15 on to say, "UBS AG and MLCS are not insiders of the
16 City as that term is defined in bankruptcy code
17 section 10131?"
- 18 A. Um-hm.
- 19 Q. And this is the important part I want to you focus on,
20 "The parties entry into and performance under the
21 forbearance agreement does not violate any law,
22 including the bankruptcy code, and does not give rise
23 to any claim or remedy against the parties thereto
24 except as may be expressly set forth in this order or
25 in such agreement."
- 1 provision does.
- 2 Q. Is this an important part of the order --
- 3 MR. SHUMAKER: Objection.
- 4 BY MR. HACKNEY:
- 5 Q. -- from the City's perspective?
- 6 MR. SHUMAKER: Objection, form.
- 7 A. Yes, without giving rise to the nomenclature
8 important. As I said before, it's important that we
9 have certainty and -- regarding the use of the casino
10 revenue, and this term certainly looks like it would
11 provide that.
- 12 BY MR. HACKNEY:
- 13 Q. Okay. And not only does it provide you the certainty
14 about the casino revenue, it provides you with the
15 certainty that you will not be -- the City will not be
16 subject to any liability as a result of performing
17 under the forbearance agreement, correct?
- 18 A. Yes, I believe so.
- 19 Q. And it does the same thing for the Swap
20 counterparties, correct?
- 21 A. Yes, I believe so.
- 22 Q. Take a look at paragraph 4 on the bottom of page 4.
- 23 A. Um-hm.
- 24 Q. It says, "The forbearance agreement is approved in its
25 entirety. The City is authorized to perform its

- 1 Do you see that?
- 2 A. Yes.
- 3 Q. Do you remember earlier we talked about whether if the
4 City performed under the forbearance agreement it
5 would be able to do so without the fear of liability
6 to other parties?
- 7 A. Yes.
- 8 Q. And your understanding was it could do so, correct?
- 9 A. Yes.
- 10 Q. And that so could the Swap counterparties, correct?
- 11 A. Yes.
- 12 Q. And isn't this provision one part of the basis for
13 your -- for that view?
- 14 A. Well, you know, as I said, this provision draws a
15 legal conclusion and I have not independently or as an
16 attorney done an analysis of what this provision will
17 provide, but that's my understanding, yes.
- 18 Q. Are you just reading this provision for the first
19 time?
- 20 A. No. I think I -- as I said, I think I saw the order
21 attached to the motion. I just didn't recall it
22 immediately or as terms by itself. I was more
23 familiar with the motion because I read that in
24 conjunction with my affidavit that was attached to the
25 motion, but I think that's the effect of what this
- 1 obligations that arise from the forbearance agreement
2 pursuant to Bankruptcy Rule 9019, and any actions
3 taken heretofore in furtherance of these obligations
4 are hereby ratified."
- 5 Do you see that?
- 6 A. Yes, I do.
- 7 Q. You understand that to be a provision by which the
8 Court provides a judicial authorization to the City
9 and the Swap counterparties to perform under the
10 forbearance agreement, correct?
- 11 MR. SHUMAKER: Objection, calls for a legal
12 conclusion.
- 13 MR. HACKNEY: I'm just asking for his
14 assumption.
- 15 A. My understanding --
- 16 MR. SHUMAKER: Just to make that clear.
- 17 A. My understanding is that is the practical effect of
18 this provision.
- 19 BY MR. HACKNEY:
- 20 Q. Okay. Is this an important part of this order?
- 21 MR. SHUMAKER: Objection to form.
- 22 A. I think approval of the forbearance agreement is an
23 important part of this order, yes.
- 24 BY MR. HACKNEY:
- 25 Q. But also the judicial authorization to perform.

1 A. Yes, I believe so.
 2 Q. Let me -- let me cut through some of these provisions,
 3 which is, what the parties really want the Court to do
 4 here, both the City and Swap counterparties, is to
 5 tell them you are allowed to perform this forbearance
 6 agreement without fear of reprisal from any third
 7 party, correct?

8 MR. JURGENS: Objection to form.

9 MR. SHUMAKER: Objection to form.

10 A. Yeah, and I also think it calls for a legal
 11 conclusion, but let me see if I can answer the
 12 question. The motion sets forth what I believe are
 13 the conditions necessary for approval of the
 14 forbearance agreement. This order seeks to approve
 15 that motion, so to the extent it does that, yes, I
 16 believe it authorizes the parties to perform and gives
 17 them the authority to go forward to a motion according
 18 to its terms which incorporates by definition the
 19 forbearance agreement, so yeah.

20 BY MR. HACKNEY:

21 Q. And they can do so without fear of liability to third
 22 parties.

23 A. You know, that -- that impacts upon -- I believe that
 24 may impact upon the question is not atypical in some
 25 orders as far as -- as we discussed earlier today,

1 A. Yeah, that's -- you know, there are so many -- there
 2 are -- there's a possibility there may be conditions
 3 under which the City could agree, so I don't want to
 4 be misleading in saying that there are no
 5 circumstances when -- but generally speaking, this
 6 order, the motion and forbearance agreement, are the
 7 expectations of the parties.

8 Q. Are you aware of the possibility that if third party
 9 claims are preserved, that that could be a
 10 sufficiently material change in this order for the
 11 Swap counterparties to be able to terminate?

12 A. It might be.

13 Q. Have you had any conversations with them about that
 14 subject?

15 A. I have not personally had any conversations with them
 16 about that subject.

17 Q. Have you directed folks that report to you to do so,
 18 either advisors or personal --

19 A. As I've said earlier, I've given the authority to my
 20 counsel and team to have all discussions that are
 21 necessary to address any contingencies that could
 22 arise, and they may well have had those discussions.

23 I'm just not aware of any with specificity.

24 Q. Okay. But you gave a general direction.

25 A. Right.

1 releases, third party liability, exculpation, those
 2 are legal conclusions. My understanding is that the
 3 way the order is -- is worded that, yes, it allows the
 4 parties to go forward.

5 COURT REPORTER: To --

6 THE WITNESS: To go forward.

7 MR. HACKNEY: Without liability to third
 8 parties.

9 BY MR. HACKNEY:

10 Q. I think we're going over ground we've gone over
 11 before.

12 A. Yeah. I believe that's the intent of the order, yes.
 13 Q. Okay. So one of the benefits of the order to the City
 14 and the Swap counterparties is that to the extent
 15 there are third party claims -- and I know you're not
 16 conceding that there are any --

17 A. Right.

18 Q. -- it clears them away.

19 A. I believe that's accurate, which is one of the -- yes.
 20 I believe that's accurate.

21 Q. And I take it the City is not willing to agree to an
 22 order which ensures the protection of third party
 23 claims?

24 MR. SHUMAKER: Calls for speculation,
 25 objection.

1 Q. You didn't give someone a specific direction to hey,
 2 go find out what the Swap counterparties think if
 3 third party rights are preserved, what are they going
 4 to do, do we have a problem? You never gave that
 5 specific direction.

6 A. No, I didn't, and let's -- you know, let's make sure
 7 we're clear on this. As I said, once we reached the
 8 agreement, you know, my direction was okay, let's get
 9 it done and let's document and do whatever's necessary
 10 to do that, so I did not give a specific direction in
 11 that regard.

12 Q. Let me ask you real quickly. One of the other
 13 benefits of the forbearance agreement to the City is
 14 that it resolves litigation that the City's currently
 15 in with Syncora, correct?

16 A. I would like to think so. To the extent it draws a
 17 legal conclusion, I'd have to defer to my counsel, but
 18 I like to think it does that, yes.

19 Q. So you think that the Court's order that we're looking
 20 at here will actually moot pending litigations
 21 involving the City and Syncora?

22 A. Perhaps not. For instance, and I haven't -- you know,
 23 I haven't drawn a legal conclusion on this, but there
 24 may be claims by the City against Syncora that survive
 25 this order. I just don't know.

1 Q. Okay. As the City's litigation against Syncora stands
 2 currently, will the Court's order moot out that
 3 litigation?

4 A. I don't know.

5 MR. SHUMAKER: Objection, calls for a legal
 6 conclusion.

7 A. Yeah, I was going to say I don't know. That -- that
 8 calls for a legal conclusion and I have not
 9 independently done that analysis.

10 BY MR. HACKNEY:

11 Q. Okay. So it may, it may not, you don't know?

12 A. It may, it may not. I don't know.

13 Q. The -- I want to talk about the source of proceeds for
 14 any potential termination payment down the road. This
 15 is a subject I discussed with Mr. Buckfire yesterday.

16 A. Um-hm.

17 Q. The optional termination amount fluctuates over time
 18 and is ultimately pegged on the day that you exercise
 19 the option; isn't that correct?

20 A. Yes, I believe that's correct.

21 MR. JURGENS: Objection to form.

22 BY MR. HACKNEY:

23 Q. So when we talk about these amounts, Mr. Orr, it's a
 24 little bit difficult because we don't -- I can't tell
 25 you you're going to have X amount of money to exercise

1 BY MR. HACKNEY:

2 Q. Okay. Now, let's link up the potential sizeable
 3 termination payment that the City may have to marshall
 4 if it wants to exercise the option with the City's
 5 current financial capabilities.

6 A. Yes.

7 Q. Okay. Isn't it true that the City does not currently
 8 have enough cash on hand to be able to fund a
 9 termination payment that was in the range of 200
 10 million dollars?

11 A. That is true.

12 Q. Okay. That's part of the problem that you're working
 13 on as emergency manager, right?

14 A. That is certainly true.

15 Q. Do you know how much cash the City has today?

16 A. On any given day, we fluctuate approximately in the
 17 neighborhood of I want to say 30 to 40 million
 18 dollars. Right now that number may be a little bit
 19 higher because we just went through one of our tax
 20 collection periods in August.

21 Q. I'm going to guess and ask you do you stay in almost
 22 daily contact with your -- with your cash flow
 23 forecast?

24 A. Almost daily, yeah.

25 Q. Yeah. That's probably an important aspect of running

1 it, but you understand that there is a distinct
 2 possibility that the amount of the optional
 3 termination payment will be a very sizable sum.
 4 MR. JURGENS: Objection to form.

5 A. I think that it's fair to say that although the
 6 interest rates may fluctuate, they are not going to
 7 fluctuate so greatly that it will reduce the
 8 probability that that will be a sizable sum. You're
 9 not going to go from zero points or two points to
 10 36 percent at the Fed discount window.

11 Q. Hopefully not or something's horrible happened.

12 A. Yeah, or we're all in trouble, yeah. So you may
 13 fluctuate, but the range of fluctuation is generally
 14 within a fairly finite bandwidth, we hope.

15 Q. And I'm going to give you some notional amounts that
 16 are based on comments your counsel has made in court,
 17 just to try and get general agreement.

18 A. Sure.

19 Q. But it's very possible that the amount of the
 20 termination payment could be between 180 and 220
 21 million dollars?

22 MR. JURGENS: Objection to form.

23 A. I think that's fair. We certainly hope it's on the
 24 lower end or lower of that scale, but that depends
 25 what the rates are at any given day.

1 the City.

2 A. It's an important aspect of the City.

3 Q. Do you still project that you're going to run out of
 4 cash by the end of the year?

5 A. If we don't have this agreement, there's a very real
 6 chance, yes, in a steady state, we will run out of
 7 cash.

8 Q. And by -- what do you mean by a steady state?

9 A. If we don't do anything such as secure this casino
 10 revenue, if we don't go to the capital markets and
 11 borrow additional funds, which appears unlikely which
 12 the City has done every other year since 2008 to make
 13 up the difference, yes, the projections show that by
 14 December of this year, we will run out of cash.

15 Q. Are those the pre-bankruptcy projections?

16 A. Yes. I believe so.

17 Q. Those are the projections that we'll get into in a
 18 moment that -- but that assumes that the City's paying
 19 its legacy expenditures on a current basis, right?

20 A. Yes. As we have -- as we have represented, we intend
 21 to continue doing that throughout the year.

22 Q. The legacy expenditures?

23 A. Well, certainly with regard to healthcare and other
 24 employees, if we get this agreement, that may change
 25 our risk for the termination payment.

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1 Q. Your view of those legacy expenditures in the
 2 bankruptcy is that they are unsecured claims, correct?
 3 A. Yes. Many of them are, yes. There are some
 4 expenditures that are secured with regard to the water
 5 department and parking and some miscellaneous, but the
 6 roughly 11 and a half, 12 billion dollars that we put
 7 out there we view as unsecured.

8 Q. So let's go back to sourcing this termination payment.
 9 A. Yes.

10 Q. It was my understanding of his testimony that
 11 Mr. Buckfire who, by the way, is the individual tasked
 12 with obtaining the City's post petition financing,
 13 correct?

14 A. Yes.

15 Q. And is presumably the individual that's most
 16 knowledgeable about that effort?

17 A. Yes.

18 Q. It was -- I'll represent to you that his testimony was
 19 that the proceeds for the optional termination payment
 20 would likely come from the post -- the proceeds of the
 21 post petition financing?

22 A. Yes.

23 MR. JURGENS: Objection to form.

24 BY MR. HACKNEY:

25 Q. Is that also your understanding?

1 Q. Okay. So I think there -- if I'm not mistaken, your
 2 father was an amen minister.

3 A. Great grandfather, grandfather and father.

4 Q. So maybe --

5 A. Yeah, took me back to -- over in the corner with the
 6 deacons, yeah, took me back.

7 Q. Okay. I won't compare myself to your father,
 8 grandfather and great grandfather, but I can aspire.

9 A. Yeah.

10 Q. So I do want to talk about -- this is important.

11 Okay. This is -- isn't it true that one aspect of the
 12 DIP -- I'm not going to get into the others -- is that
 13 the casino revenues will be pledged or anticipated to
 14 be pledged as collateral for the post petition
 15 financing?

16 A. Let me say this. That is certainly under
 17 consideration.

18 Q. Okay. Now, isn't it also true, though, that the
 19 casino revenues have not currently been freed up on a
 20 permanent basis because the City has not currently
 21 exercised the option, correct?

22 A. The certainty that we hope to get out of the
 23 forbearance agreement has not been approved yet,
 24 correct.

25 Q. Well, even if it is approved by the Court, you still

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1 A. Yes.

2 Q. Okay. Now, isn't it also true that the City hopes to
 3 pledge the casino revenues as part of the collateral
 4 package for the post petition financing?

5 MR. SHUMAKER: I'm going to object here.
 6 We're getting into an area where it is incredibly
 7 commercially sensitive as to what sort of post
 8 petition financing that the City is seeking.

9 MR. HACKNEY: Let me not be rude. I will
 10 tell you I'm just going to ask him questions that
 11 Buckfire asked yesterday -- answered. So I'm not
 12 going to try and play the whole thing, but there were
 13 absolutely areas where Buckfire answered. I think
 14 there were a lot of other people in the room that were
 15 there. I think any of your colleagues --

16 MR. SHUMAKER: Okay, that's fine.

17 MR. HACKNEY: Any of your colleagues.

18 MR. SHUMAKER: I just want to caution you.

19 MR. HACKNEY: I understand. I understand
 20 the sensitivity. There were absolutely areas, though,
 21 that Buckfire talked about. This was one of them. I
 22 mean can I get an Amen or --
 23 (Consensus Amen.)

24 A. Okay.

25 BY MR. HACKNEY:

1 won't have exercised the option.

2 A. That is true with regard to the optional termination
 3 payment.

4 Q. Right.

5 A. Yes.

6 Q. And you need to exercise the option to terminate the
 7 hedge, right?

8 A. Yes.

9 Q. You need to terminate the hedge to terminate the
 10 collateral agreement.

11 A. I think that's --

12 MR. SHUMAKER: Object to form, to the
 13 extent calls for a legal conclusion.

14 A. Yeah, without getting into legal conclusions --
 15 COURT REPORTER: I'm sorry. This is --

16 BY MR. HACKNEY:

17 Q. You think it's a fair characterization that you need
 18 to get the hedge terminated to get the collateral
 19 agreement terminated?

20 A. Yes.

21 Q. And the good part for the City, if those things
 22 happen, is that now you have unchanneled access to the
 23 casino revenues going into the future?

24 A. Yes, as we've said today, that certainty is one of the
 25 motivations to enter into the agreement.

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1 Q. But do you also understand that you can't currently
 2 pledge the casino revenues to a post petition lender
 3 in a -- prior to having exercised the option under the
 4 forbearance agreement?

5 A. Well, let's be careful without drawing legal
 6 conclusions. You can always enter into agreements
 7 that have contingencies attached to them and the
 8 parties will wait for those contingencies to occur.
 9 That certainly has happened with a number of different
 10 negotiations, not just in this case, but happens all
 11 the time.

12 Q. That's fair that you absolutely -- you make a pledge
 13 that's contingent on something else. But isn't it
 14 true that, as a general matter, post petition lenders
 15 typically like to make sure that they have clean
 16 collateral before they make a loan that's secured by
 17 that collateral?

18 MR. SHUMAKER: Objection, calls for
 19 speculation.

20 A. I think that's generally a fair characterization;
 21 however, there have been cases that I've been involved
 22 with outside of this one where post petition lenders
 23 have been willing to make pledges or commitments
 24 subject to certain contingencies.

25 BY MR. HACKNEY:

1 mislead you. It is my assumption that, while they're
 2 commercially sensitive, that's not going to be
 3 forthcoming.

4 Q. Oh, really?

5 A. Yes.

6 Q. So just to tie it up, you tried to get a -- whether
 7 it's credit enhancement or liquidity from the State
 8 and the Feds, and your expectation is that you won't
 9 be able to?

10 A. My understanding at the State level is that there's
 11 certain prohibitions of the State law on the ability
 12 of the State to lend to the City, and at the Federal
 13 level my understanding is that it's not going to be
 14 forthcoming, direct aid.

15 Q. Interesting. And what about credit enhancement by the
 16 State?

17 A. Here again, it's highly commercially insensitive --
 18 sensitive. I don't want to say anything that
 19 forecloses it, but we -- let me answer it this way.
 20 We are operating on the assumption that that will not
 21 come -- be forthcoming.

22 Q. The casino revenues are about 170 million dollars a
 23 year; isn't that correct?

24 A. Yeah, 170, 180 somewhere in there.

25 Q. Yeah. In fact, that -- it's interesting because the

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1 Q. Isn't it your expectation today, though -- is it -- is
 2 it your expectation today that any post petition
 3 lender will want clear -- a clear lien on the casino
 4 revenues before it's willing to lend? Is that your
 5 current expectation?

6 A. Well, my current expectation is it might well want
 7 clear lien before it's willing to fund. I would think
 8 in many of the bankruptcy cases that I've been
 9 involved in, post petition lenders, for instance, are
 10 willing to make commitments subject to the Court
 11 approving their super priority liens, and then once
 12 that approval is granted, they fund the loan, so
 13 that's fairly common.

14 Q. I'm going to confirm for the record that conversations
 15 with the State of Michigan about providing DIP
 16 financing or with the federal government about
 17 providing DIP financing are still questions that you
 18 will refuse to answer on the grounds of commercial
 19 sensitivity?

20 MR. SHUMAKER: I think you can ask Mr. Orr
 21 those questions. I don't want to -- I don't want to
 22 categorically exclude you from doing that.

23 BY MR. HACKNEY:

24 Q. Are they commercially sensitive?

25 A. They are commercially sensitive, but I don't want to

1 DIP proceeds you're seeking are up to 350, is that
 2 correct?

3 A. Here again, those are commercially sensitive, but I
 4 think that's fair. Yes, I think that's fair.

5 Q. Okay. And that's the equivalent of two years' worth
 6 of casino revenues, correct?

7 A. Yes.

8 Q. Okay. And that's something that you think you may be
 9 able to get without having to pledge a clear lien on
 10 the casino revenues, right?

11 A. No. What I'm trying to say is you can certainly enter
 12 into commitments. I'm drawing commitments different
 13 from funding. You can certainly have a lender which
 14 is quite common in bankruptcy cases to make a
 15 commitment subject to approval of its security
 16 interest or priorities to actually fund.

17 Q. Okay.

18 A. So that can occur.

19 Q. So the fact that that can occur means that there can
 20 be uncertainty in connection with the casino revenues
 21 and it won't hamstring your DIP process, correct?

22 A. Yeah, it's not so much -- well, to a degree what
 23 you're saying is correct. It's not so much
 24 uncertainty with casino revenues because that's math.
 25 It may be some uncertainty with regard to the ability

<p style="text-align: right;">Page 209</p> <p>1 of the City to pledge those revenues to pay off any 2 post petition lending, and, here again, a lender might 3 well be willing to enter into an agreement subject to 4 having that insecurity removed to fund that --</p> <p>5 Q. The fact of the matter is the DIP process is just 6 getting off the ground, correct?</p> <p>7 A. I think that's fair to say.</p> <p>8 Q. I think it's literally in the last couple days, right?</p> <p>9 A. I think that's fair.</p> <p>10 Q. So you don't know as you sit here today, and you 11 probably wouldn't tell me if you did --</p> <p>12 A. Right.</p> <p>13 Q. -- what the current appetite of the lenders is for 14 uncertainty around the casino revenues, correct?</p> <p>15 A. That -- that I think is part of the process. Yeah.</p> <p>16 Q. Now, have you attempted to borrow money -- has the 17 City attempted to borrow money and secure those 18 borrowings with a lien on something other than the 19 casino revenues?</p> <p>20 A. No.</p> <p>21 Q. Is the -- is the City considering pledging art as 22 collateral?</p> <p>23 MR. SHUMAKER: Again, I'm going to get into 24 now the -- this is a very commercially sensitive 25 subject.</p>	<p style="text-align: right;">Page 211</p> <p>1 A. Yeah.</p> <p>2 MR. SHUMAKER: I'm going to say that's -- 3 we're drawing a line. We're getting into specifics, 4 and I'm going to instruct him not to answer.</p> <p>5 MR. HACKNEY: I -- okay. That's just all I 6 need to know for the record.</p> <p>7 BY MR. HACKNEY:</p> <p>8 Q. Okay. Now, I want to talk about revenue streams other 9 than casino revenues.</p> <p>10 A. Right.</p> <p>11 Q. The City does have other revenue streams; isn't that 12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. In fact, on an annual basis, the City's revenues are 15 in the neighborhood of a billion to a billion 1, 16 correct?</p> <p>17 A. Yes, I think that's fair.</p> <p>18 Q. And on an annual basis, the casino revenues are in the 19 range of 170 to 180 million?</p> <p>20 A. Yes.</p> <p>21 Q. Roughly a little less than 20 percent of the City's 22 annual revenues.</p> <p>23 A. 17 and a half, 18 percent.</p> <p>24 Q. Now, there's somebody who studied. Okay.</p> <p>25 So have you engaged the possibility of</p>
<p style="text-align: right;">Page 210</p> <p>1 MR. HACKNEY: I'm just asking the 2 questions. You guys got to decide --</p> <p>3 MR. SHUMAKER: I'm just stating my 4 objection, and the fact of the matter is, as was 5 stated yesterday with -- with Mr. Buckfire, is that 6 when we get into the -- as you said, the RFP, the DIP 7 RFP process is just started. We're not going to go 8 into strategy or what the terms are or what the 9 specifics are, because we do not believe that this is 10 something that would be down to the City's benefit. 11 If it's negotiated, gets public, and bidders' --</p> <p>12 MR. HACKNEY: Sure.</p> <p>13 MR. SHUMAKER: -- identities are revealed 14 and all these things --</p> <p>15 MR. HACKNEY: I don't mean to be rude, and 16 I totally respect the speech. I'm just interested in 17 time, and for me the upshot is are you going to let 18 him answer or not?</p> <p>19 MR. SHUMAKER: Well, if will you repeat the 20 question, I'll tell you.</p> <p>21 MR. HACKNEY: I can't remember the question 22 anymore.</p> <p>23 A. Have you considered --</p> <p>24 MR. HACKNEY: Are you going to pledge the 25 art --</p>	<p style="text-align: right;">Page 212</p> <p>1 pledging other revenue streams as security for the 2 DIP?</p> <p>3 A. This is a commercially sensitive area. In addition, 4 there are potentially legal issues that must be 5 resolved. Suffice it to say we have examined a number 6 of different possibilities, looking at what options we 7 might have given the City's various ordinary revenue 8 streams.</p> <p>9 Q. And are there other revenue streams that could be 10 pledged? I'm not going to ask you whether you are 11 going to pledge them, whether you will, whether you 12 plan to, but are there other revenue streams that 13 could be pledged?</p> <p>14 A. There might be. There might be, but there's -- here 15 again, there's certain legal issues regarding any 16 revenue streams that have to be resolved.</p> <p>17 Q. Let me ask you about the -- the use of the casino 18 revenues if you're able to obtain them.</p> <p>19 A. Right.</p> <p>20 Q. So just in terms of level setting --</p> <p>21 A. Right.</p> <p>22 Q. -- the casino revenues are approximately 15 million a 23 month.</p> <p>24 A. Yes, I think that's fair.</p> <p>25 Q. Net of the Swap payment which is still made on a</p>

1 monthly basis under the forbearance agreement --
 2 A. Yes.
 3 Q. -- you net about 11 million?
 4 A. I think that's correct.
 5 Q. Okay. Your claim is that these revenues are necessary
 6 to the operation of the City. I think we discussed
 7 that earlier.
 8 A. Yes.
 9 Q. And in fact it's your expectation that you will use
 10 these revenues to fund the reinvestment program that
 11 you have planned with respect to the 1.25 billion
 12 dollars of reinvestment in the City over the next ten
 13 years?
 14 A. Yes, that's correct. An average of 125 million a year
 15 which a big component of it is this revenue.
 16 Q. Okay. So fair statement, you're going to take the
 17 casino revenues and you're going to plow them into the
 18 City, correct?
 19 A. More -- I mean, money goes into a bathtub, but yes.
 20 The casino -- we don't have the casino revenue. We
 21 have no other source to make reinvestment in the City.
 22 Q. And that's what you want to do?
 23 A. Yes.
 24 Q. And so as a creditor, I'm going to make the obvious
 25 point that you don't plan to take the casino revenues

1 A. Yes.
 2 Q. -- effectively a pot of 2 billion dollars of bonds.
 3 A. Correct.
 4 Q. And I want to distinguish between two concepts and
 5 make sure that we're on the same page because I think
 6 that we are.
 7 A. Right.
 8 Q. The first point is that you do agree that you're not
 9 going to take the casino revenues and put it on top of
 10 the 2 billion pot to make a larger recovery for
 11 creditors.
 12 A. Yes, that's fair.
 13 Q. But you are saying that there could be some value to
 14 the creditors of a revitalized Detroit because that
 15 Detroit will be more able to perform under the
 16 2 billion dollars in bonds that you're going to give
 17 them as part of your proposal?
 18 A. That's correct.
 19 Q. Okay. Did I summarize accurately the distinction you
 20 were trying to draw there?
 21 A. Yes. Yes. There's a broader concept about the need
 22 to revitalize the City and grow beyond just the
 23 interest of the creditors. It's also for the citizens
 24 and residents and future of the City.
 25 Q. Oh, absolutely. I understand that.

1 and give them to the unsecured creditors, correct?
 2 A. I think that's generally a fair characterization.
 3 Q. So isn't it fair that other than perhaps certainly
 4 benefitting the people of Detroit if you reinvested in
 5 the City, the creditors themselves will not see their
 6 recoveries enhanced by the fact that the City has
 7 gained access to these casino revenues, correct?
 8 MR. SHUMAKER: Objection, calls for
 9 speculation.
 10 A. Yeah, I'm going to be careful here because one of the
 11 things we've offered in our proposal, June 14th
 12 proposal, is a 2 billion dollar note that has some
 13 capacity to fluctuate. Generally speaking, your
 14 statement is true, but there's another concept that
 15 without this reinvestment there's a very real chance
 16 that the City will have no chance to stabilize and
 17 grow and the creditors will see no opportunity for any
 18 benefit because the City would have an inability of --
 19 continue to decline, quality of life will continue to
 20 decline, revenue from other streams will continue to
 21 decline, and the City's ability to satisfy its
 22 obligations to the creditors will continue to decline.
 23 Q. Now, I understand that distinction, and we're talking
 24 now about the proposal you've made to creditors that
 25 you would give all of the unsecureds --

1 A. But, yes, that's generally -- no direct benefit from
 2 the casino revenue.
 3 Q. Consistent with what we've just discussed then, you
 4 haven't undertaken an analysis to show how much
 5 creditor -- unsecured creditor recoveries will be
 6 enhanced if the forbearance agreement is approved,
 7 because you intend to use the money to reinvest in the
 8 City.
 9 A. No. I'm not sure that's true. I mean, that's why I
 10 was saying before, part of it is enhancing the
 11 stability of the City and its ability to meet or
 12 actually to provide for that 2 billion dollar note.
 13 It depends on large part on the ability to stabilize
 14 the City.
 15 Q. I understand that as a general concept, but I meant
 16 have you undertaken actually any actual analysis of
 17 the potential Delta 2 creditor recovery?
 18 A. Oh, from the 120 -- from the casino revenue?
 19 Q. Right.
 20 A. Yes, I believe we have.
 21 Q. And what does it show?
 22 A. Here again, that's -- it's sensitive and, in addition,
 23 I believe those discussions were caught up in
 24 discussions I had with counsel, so I'm going to have
 25 to decline.

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- 1 Q. Those are privileged communications?
- 2 A. I believe so.
- 3 Q. So the analysis of how my client Syncora, as an
4 unsecured creditor, would do if the assumption motion
5 is denied versus how it will do if its granted, that's
6 something that you cannot speak to?
- 7 A. Right, because it goes into the analysis, as we said
8 earlier today, what would happen if it were denied,
9 what the options would be to the City, what litigation
10 risk would happen, what would be caught up in the
11 existing litigation, all those issues.
- 12 Q. Let me hand you Orr Exhibit Number 3.
- 13 MARKED FOR IDENTIFICATION:
- 14 DEPOSITION EXHIBIT 3
- 15 12:30 p.m.
- 16 BY MR. HACKNEY:
- 17 Q. It's even in color. One large view for you. I don't
18 mean that di --
- 19 A. Okay.
- 20 Q. Sorry.
- 21 A. I know you didn't. Okay.
- 22 Q. Yeah, okay. Cringeworthy, awkward. I apologize.
- 23 THE WITNESS: Can we go off the record for
24 a second?
- 25 MR. HACKNEY: Yeah.

- 1 June 14, 2013 meeting with creditors, correct?
- 2 A. Yes, I and my team put this together.
- 3 Q. And the best of your knowledge, this is a --
- 4 A. True and correct copy.
- 5 Q. -- true and correct copy?
- 6 A. Yes. I have no reason to believe this is not a true
7 and correct copy, in color.
- 8 Q. Great. Please don't --
- 9 A. Okay. This is --
- 10 Q. And obviously -- we haven't talked about this, but
11 Ernst & Young was retained to -- by the City to
12 undertake efforts to understand the City's cash flow
13 forecast, among other things, correct?
- 14 A. Yes, in addition -- yes.
- 15 Q. And I know that you're involved in all aspects of the
16 City's operation as emergency manager, but isn't it
17 true that Ernst & Young is the entity responsible for
18 preparing the City's cash flow forecasts?
- 19 A. Yes. I am not an account; they are. Yes.
- 20 Q. Okay. So while I'm certain that you have reviewed
21 their work product --
- 22 A. Yes.
- 23 Q. -- when it comes to actually compiling the forecast
24 itself, if I wanted to ask about how was this number
25 arrived at or this projection, I would have to ask

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- 1 VIDEO TECHNICIAN: The time is 12:30 p.m.
2 (Discussion off the record at 12:30 p.m.)
3 (Back on the record at 12:31 p.m.)
- 4 VIDEO TECHNICIAN: We are back on the
5 record the time is 12:32 p.m.
- 6 BY MR. HACKNEY:
- 7 Q. Mr. Orr, I am going to play it by the book --
- 8 A. Okay.
- 9 Q. -- from here on out, just to be safe.
- 10 A. Sure.
- 11 Q. And to the extent any of that was on the record, I do
12 want to offer a fulsome apology. That was an
13 inadvertent reference.
- 14 A. No apology necessary. To the extent anybody thinks
15 there was an apology necessary, it's not.
- 16 Q. Okay. Well, I appreciate that. Very gracious of you.
- 17 So in the motion to assume the forbearance
18 agreement, the City makes the claim that the City is
19 currently in a liquidity crisis; isn't that correct?
- 20 A. Yes.
- 21 Q. And that's something that you obviously agree with,
22 right?
- 23 A. Yes.
- 24 Q. Now, you prepared this proposal for creditors that
25 I've marked as Orr Exhibit 3 in anticipation of your

- 1 Ernst & Young.
- 2 A. You would -- yes, they'd be the best evidence of how
3 that was done.
- 4 Q. Okay. You might have knowledge about one number here
5 one number there because someone specifically
6 discussed it with you, but you don't have
7 comprehensive knowledge of how all the numbers in the
8 cash flow forecast were arrived at.
- 9 A. No. Usually the process is the financial advisor and
10 the -- Ernst & Young, for instance, would do the deep
11 dive and then present me with a report and analyses,
12 but they would have the in-depth knowledge.
- 13 Q. Fair enough. Fair enough.
- 14 You see their work product and you go over
15 with it with them. You're not the one that compiles
16 their work product.
- 17 A. That is correct.
- 18 Q. Obviously, in compiling this report, you, Ernst &
19 Young, your other advisors endeavored to be as
20 accurate as you could in assembling the information
21 contained in this report?
- 22 A. Yes.
- 23 Q. And that also would apply to forecasts that you were
24 making. You tried to be as accurate as possible about
25 making forecasts.

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- 1 A. Yes.
- 2 Q. So let me draw your attention, if I could, to page 38
3 of this report.
- 4 A. Yes.
- 5 Q. Now, this is -- this is titled A Look At the Future in
6 the Absence of Restructuring Initiatives. Do you see
7 that?
- 8 A. Yes.
- 9 Q. Okay. So what this table is doing is it's saying here
10 is where the City of Detroit is headed without any
11 increases in expenditures necessary to restore City
12 services to adequate levels; without additional
13 investments by the City and services assets or
14 infrastructure; and, last, without any changes to
15 legacy liabilities, correct?
- 16 A. Yes, that's correct.
- 17 Q. Now, we're going to talk about each of these three
18 things in a moment, but the fact of the matter is each
19 of those three things have changed during the
20 bankruptcy process in terms of what legacy liabilities
21 are getting paid or what reinvestments are being made,
22 correct?
- 23 A. To some degree they have and to some degree they
24 haven't. We are still in a steady state with, for
25 instance, salary, overtime, fringe, health benefits,

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- 1 operating expenses, with regard to secure debt
2 service, pension contributions which remain
3 underfunded, health benefits are still in a steady
4 state. We are hopefully in a steady state on a
5 revenue side as well.
- 6 Q. I was just making --
- 7 A. But, yes.
- 8 Q. I was making a simpler point, which is, for example --
9 we'll go into this, but like you're not paying the
10 service payments related to the COPs during the
11 bankruptcy?
- 12 A. I believe that's correct.
- 13 Q. Okay. And I think you're deferring pension
14 contributions.
- 15 A. A portion of the pension contributions. For instance,
16 this year I think we had an obligation of
17 approximately 131 million dollars. I think we paid 31
18 million of it.
- 19 Q. Okay. So a portion.
- 20 A. But that is the steady state. The City regularly
21 defers pension contributions.
- 22 Q. True, true. We'll get into this in a moment here,
23 but --
- 24 A. Right.
- 25 Q. -- now, the fiscal year of the City runs from June 30
- 1 to June 30, right?
- 2 A. Yeah, July 1 to June 30.
- 3 Q. Right. Yeah. Okay.
- 4 And the years that are listed here, it's
5 your understanding these are the fiscal years,
6 correct?
- 7 A. 2008 to 2012 are fiscal year actuals. 2013 were
8 preliminary forecasts, at this time forward.
- 9 Q. That's right. This was back in June, so you had a
10 little -- there was a stub period on June 2013?
- 11 A. Yes.
- 12 Q. When I talked to Mr. Buckfire yesterday, he indicated
13 that it was his understanding that these years are
14 July 1, 2013 through June 30, 2014 --
- 15 A. That's correct.
- 16 Q. -- 2014 here?
- 17 A. That is correct.
- 18 Q. Now, the forecast that the City indicates when it
19 comes to total revenues for the fiscal year that we're
20 currently in is about 1,082,800,000 in total revenue,
21 correct?
- 22 A. That is correct. That's down about 30-some-odd
23 million dollars from the prior year.
- 24 Q. Right. And if you look at the operating expenditures,
25 that shows that you anticipate 685.7 million in

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- 1 A. Well --
 2 Q. Put aside --
 3 A. Yeah, put aside --
 4 Q. I understand.
 5 A. -- debt service and pension contributions, healthcare,
 6 but just looking at operating expenses, that would be
 7 correct.
 8 Q. And -- that's right. I'm emphatically doing that.
 9 I'm referring to --
 10 A. Right.
 11 Q. -- this line. Okay?
 12 A. Right.
 13 MR. SHUMAKER: Which line, Steve?
 14 MR. HACKNEY: The line that says net
 15 operating surplus.
 16 A. It's in bold. It's the 1, 2, 3, 4th line down.
 17 BY MR. HACKNEY:
 18 Q. And, I mean, can we agree it wasn't an accident that
 19 whoever compiled this broke the legacy expenditures
 20 down below the operating expenditures, correct?
 21 A. Yes. I'm sure that was intentional.
 22 Q. Right. And that's because, for example, while
 23 payments to the COPs are likely very important to the
 24 COP holders --
 25 A. Right.

- 1 A. Yes. There's one caveat to that. It is front end
 2 loaded that almost 500,000,000 of that will be spent
 3 in the first six years going forward, but that's the
 4 average over ten years.
 5 Q. Okay. So if -- there's some element of lumpiness to
 6 it.
 7 A. Yes.
 8 Q. It was 500,000,000 over the first --
 9 A. Over the first six years.
 10 Q. Oh, so that's less than 125 a year.
 11 A. No, it's more. It's 500,000,000 over the first six
 12 years -- I believe it's on page 47 -- maybe on page 47
 13 or 48. If you look on page 47, not to go out of
 14 sign -- but if you look at the second to the last bold
 15 line, it says reinvestment in the City. Starting in
 16 2014 you'll see, for instance, the total reinvestment
 17 in the City will be \$188.5 million dollars.
 18 Q. I'm sorry, I blanked on you. What page are you on?
 19 A. Oh, I'm sorry. Page 47, the second to the last bold
 20 line, you will see that in the first year of the
 21 preliminary forecast -- this is in a steady state, so
 22 we're comparing steady state to steady state --
 23 without any adjustments that that reinvestment
 24 expense, total reinvestment in the City will be 188.5
 25 million dollars and --

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- 1 Q. -- they're not something that you actually use to run
 2 the City.
 3 A. Well, yes, it's not an operating expense.
 4 Q. Right.
 5 A. It's a debt service.
 6 Q. Right.
 7 A payment to a police officer for their
 8 time or for their benefits, that is an operating
 9 expense?
 10 A. Absolutely.
 11 Q. And that's all covered in the operating expenditures.
 12 A. Yeah. Salary over time and fringe benefits, yes.
 13 Q. Okay. So if you follow along in my hypothetical and
 14 we took out what we'll call a hundred -- we'll split
 15 the difference. We'll say it's 175,000,000.
 16 A. Sure.
 17 Q. I'll tell you in here it's projected to be 170 -- why
 18 don't we use the number here. If we took the 170 out,
 19 you'll still have 227.2 million dollars to work with
 20 from the standpoint of a net operating surplus,
 21 correct?
 22 A. Yes, roughly \$230,000,000.
 23 Q. Okay. Your reinvestment plan I believe calls for a
 24 billion and a quarter over ten years and it's commonly
 25 described as being about \$125,000,000 a year.

- 1 Q. Oh, I see it. Okay.
 2 A. Third line up from the bottom.
 3 But if you wanted to average it, it would
 4 be 125 over ten years.
 5 Q. Oh, I see. And it drops off quite a bit in --
 6 A. Right. After the six years, it drops off to \$32.8
 7 million.
 8 Q. And if I recall, what I had said to you earlier is
 9 that even if we take out the casino revenues, you will
 10 have \$227,000,000 in net operating surplus to work
 11 with. That's where we were before we broke.
 12 A. Right. Operating, but that still does not adjust for
 13 other expenditures, legacy expenditures we call them.
 14 Q. That's true. All of which -- the large majority of
 15 which are unsecured claims in the bankruptcy, correct?
 16 A. Well, if you look on page -- go back to page 38 where
 17 it says net operating surplus, you'll see the first
 18 line below net operating surplus is debt service and a
 19 portion of that one -- portion of that 141.4 for year
 20 2013 or 135.9 for year 2014 is secured debt service.
 21 Q. Some portion of the gold bonds is secure?
 22 A. Some portion is secured, roughly -- roughly
 23 30,000,000.
 24 Q. That's a very appropriate caveat. I will say with
 25 that caveat and with the caveat of the Swaps, the

<p style="text-align: right;">Page 229</p> <p>1 remainder of the claims under legacy expenditures are 2 ones that you consider unsecure. 3 A. Yes. That's how we treated them in our proposal. 4 Q. And by the way, even with respect to the Swaps, I've 5 been giving you full credit for the 170 of the casino 6 revenues, but you actually have to not -- you have to 7 net the swap payments out against it, at least until 8 you exercise the -- 9 A. Yes. Yes, that's correct. 10 Q. So with respect to the 188, we can agree that the 227 11 net operating surplus you have, as a matter of math 12 and subject to your qualifications about certain 13 secured legacy obligations, is larger than 188? 14 A. Yes. The surplus is assuming that we make no pension 15 contributions, we do not service -- you have to back 16 out of that -- you call it 227. I call it 230. You 17 have to back out of there approximately \$30,000,000 in 18 debt service under the LTGO and UTGO -- 19 COURT REPORTER: I'm sorry, under the? 20 THE WITNESS: I'm sorry. 21 A. Under the LTGO and UTGO cat -- the bonds category debt 22 service, so that would leave you with a net of roughly 23 200,000,000, and then if you look on the 2014 column, 24 you would see that if -- if some portion of pension 25 contributions were made and some portion of healthcare</p>	<p style="text-align: right;">Page 231</p> <p>1 get the 230. If you take out the 30 million in 2 secured bonds, you'd have 200 million, there's so much 3 significant debt that it's not adjusted, we wouldn't 4 have that 200 million. 5 Q. Let me ask you about something I read in the 6 newspapers. 7 A. Okay. 8 Q. So I want to ask whether it's true or not. Isn't it 9 true that two days before the City filed for 10 bankruptcy you held a meeting with community leaders? 11 A. I had a public meeting with the public as well as 12 community leaders. The -- 13 Q. Did you have a closed door meeting with community 14 leaders two days before -- 15 A. I'm sorry. 16 Q. -- the bankruptcy? 17 A. Let me correct that. I'm sorry. I was thinking 18 about -- we're looking at this document, so I was 19 thinking about the meeting with creditors. 20 The bankruptcy was July 18th. 21 Q. Yes. 22 A. I believe I did have a meeting with leaders roughly 23 July 16th, is it? 24 Q. And was it a closed door meeting? 25 A. I don't recall, but it may been.</p>
<p style="text-align: right;">Page 230</p> <p>1 benefits were made, that would essentially wipe out 2 the 200,000,000, and that's not dealing with the COPs 3 or the Swaps payment. 4 Q. It is however your expectation that substantial 5 portions of retiree health and benefits will be 6 deferred at a minimum? 7 A. They essentially have to be because we won't have the 8 money. 9 Q. That's right. And also pension contributions, 10 substantial parts of those are being deferred at a 11 minimum? 12 A. This year we deferred some and we are anticipating 13 deferring more, and again -- but that creates a 14 deferred pension obligation. There are two things 15 that's missing from this analysis. One is we have a 16 general operating deficit going forth this year, about 17 \$387,000,000, for which there's no provision made in 18 the cash flow analysis, and we have an aggregate 19 deferred pension contribution number close to 20 200,000,000. 21 So while I under -- take your point that if 22 you were to take out from 1.1 billion, deduct the 23 roughly 700 million in operating expenses, would leave 24 you with a net of 400 million, if you were to back out 25 the 170 million or so in wagering expenditures, you</p>	<p style="text-align: right;">Page 232</p> <p>1 Q. Now, it's been reported in the press that during that 2 meeting one of the things that you said to these 3 community leaders was that the first thing to be done 4 to help the City with the City's bankruptcy was to, 5 "Deal with these Huns on Wall Street." 6 Did you say that, Mr. Orr? 7 A. I may have said that. 8 Q. Okay. 9 A. Some people make misstatements, as witnessed today. 10 So I may well have said that. 11 Q. I will -- I will suggest to you, earlier, and I want 12 to reiterate that was truly unintentional. 13 A. Steve, as I said, some people may make misstatements, 14 and as I said today it happens. 15 I may have said that. 16 Q. When you said that about the Huns of Wall Street, I 17 take it wasn't like a slip of the tongue. Did you 18 mean to say hey, the first thing I mean to do is deal 19 with the Huns of Wall Street? 20 A. No. Let me explain that. What I meant to say by that 21 is look, we've got to deal with adjusting our debt to 22 the creditors as well as our obligations to the 23 laborers, and I used -- I used I think the 24 nomenclature Huns. It was probably too colloquial, 25 too slip of the tongue.</p>

<p style="text-align: right;">Page 233</p> <p>1 I wasn't meaning to impugn anyone's 2 character. That was an allusion to a statement that 3 I've seen used before, you've got to keep the Huns out 4 of the portals, and that's all I meant.</p> <p>5 Q. When you talk about the Huns of Wall Street, you mean 6 banks, bond holders, bond insurers, Swap insurers, 7 Swap counterparties, etcetera, correct?</p> <p>8 A. Whatever's on Wall Street, yes.</p> <p>9 Q. Yeah.</p> <p>10 A. Largely speaking.</p> <p>11 Q. You mean the clients of the folks in this room, in the 12 main?</p> <p>13 A. Well, some of whom were my ex-clients, who probably 14 will no longer be, but yeah.</p> <p>15 Q. I understand. But wouldn't you agree, Mr. Orr, that 16 while the last, you know -- going back to 2006, when 17 they had that COPs transaction, I know that it's been 18 a challenging time in Detroit, but the Huns of Wall 19 Street were some of the people that kept the City's 20 lights on by providing credit to the City?</p> <p>21 A. Let me say this, and I'm not going to use the word Hun 22 anymore.</p> <p>23 Q. Okay.</p> <p>24 A. I've since learned to be very careful with my words. 25 The capital markets have assisted the City in many,</p>	<p style="text-align: right;">Page 235</p> <p>1 speculative as far as what happened. In fact, before 2 I took this job, I read several articles that advised 3 the City to file bankruptcy in 2005. So I'm going to 4 be careful about what would have happened if the City 5 had not received that 1.4, because at that time, my 6 understanding -- I wasn't here, but from what I read 7 that was to supposed to secure the unfunded portion of 8 the pension liability at that time, and it didn't work 9 out so well, but there was provision of credit to the 10 City.</p> <p>11 Q. In your mind, when you made the statement, were you 12 trying to convey to people that you view the 13 pensioners' claims or the retirees' claims or the 14 current employees' claims for pension benefits or -- 15 or health benefits as more important than the claims 16 of unsecured creditors like Wall Street participants 17 such as my client?</p> <p>18 A. No. I was not trying to make any value judgments 19 about the claims. What we had done -- here again, as 20 I said, it was a colloquialism that I made in a closed 21 door meeting, but I was not trying to convey to anyone 22 that we were treating any class of creditors -- 23 unsecured creditors differently than the others. As 24 provided for in our proposal, we were treating them 25 all equally.</p>
<p style="text-align: right;">Page 234</p> <p>1 many ways over the years, and as I said before earlier 2 today, in addition to providing funding in 2008, 2010, 3 2012 when the City was in very dire straits, so I do 4 not mean to impugn in any way the help that the 5 capital markets have provided to the Cities -- to the 6 City.</p> <p>7 What I do mean to say is given the dire 8 straits that the City is in, and the fact that under 9 any set of circumstances, it can no longer afford to 10 pay this debt, there has to be adjustment of this 11 debt, particularly the unsecured debt portion, and 12 that's both for the capital market community, 13 including banks, private equity, as well as for the 14 obligations we owe to our labor counterparts, 15 including health and pension funds.</p> <p>16 Q. In fact, bond holders, the so-called COP holders, as 17 part of the 2006 transaction, they contributed a 18 billion four that ultimately went into the pension 19 funds, correct?</p> <p>20 A. I believe that was the number, yes.</p> <p>21 Q. And if that hadn't happened back then, all things 22 being equal you'd have an even larger unfunded pension 23 liability than you currently do, right?</p> <p>24 A. Well, I'm going to be careful about what would have 25 happened because it may have -- you know, it's</p>	<p style="text-align: right;">Page 236</p> <p>1 Q. We're coming up on the one o'clock hour, which is 2 almost the end of my time, and I think I'm going to 3 just ask you a couple questions to tie up and then --</p> <p>4 A. Sure.</p> <p>5 Q. -- I'll allow you to go get a well-deserved lunch.</p> <p>6 A. Thank you.</p> <p>7 Q. I've asked you earlier about selling the art and I 8 asked you about it as considering it as a potential 9 backup plan to the negotiations with the Swap 10 counterparties.</p> <p>11 A. Right.</p> <p>12 Q. Do you remember that testimony?</p> <p>13 A. Yes, I do.</p> <p>14 Q. We went back and forth.</p> <p>15 A. Yes.</p> <p>16 Q. I'd like to bring it forward to the future, to the 17 present.</p> <p>18 A. Yes.</p> <p>19 Q. Which is, are you under active consideration now of 20 using the art to alleviate the liquidity crisis and to 21 do all of the things that you say you want to do in 22 this proposal?</p> <p>23 A. No. There are no plans to use the art or any other 24 asset in particular to liquidate it to 25 relieve liquidity issues in the City. What I have</p>

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1 said when I first took this job, and continue to say,
 2 all options are on the table. We are currently
 3 beginning the process of appraising approximately
 4 3,500 pieces of art in the City of the 66,000 that are
 5 there at the DIA, and once we go through that process,
 6 we will have to decide what, if anything, we need to
 7 do, but I have no plans to use art to relieve the
 8 liquidity crisis that the City is in now.

9 Q. So let me offer an observation for you to react to,
 10 which is, earlier on when I was asking you questions,
 11 you were telling me about the terrible things
 12 happening in the City, people dying, being shot, the
 13 seriousness of the problems with which you're
 14 grappling.

15 A. Yes.

16 Q. You've also identified the assumption motion as
 17 something that needs to be moved along quickly because
 18 of its importance to the issues that we discussed,
 19 right?

20 A. Right.

21 Q. Why isn't the art equally important to allowing you to
 22 fix Detroit?

23 A. I haven't said that it's not important. What I've
 24 said is there are no plans to liquidate it to address
 25 those concerns. I think it is fair to say that there

1 process.

2 Q. Just a few more questions and I'll pass the baton.

3 A. Sure.

4 Q. I take it that when you were appointed as emergency
 5 fin -- emergency manager, you familiarized yourself
 6 with some of the prior negotiations that had gone on
 7 around efforts to resolve the Swap that I believe were
 8 referenced in the 2012 CAFR of the City of Detroit.

9 A. Consolidated report, yes.

10 Q. You at least made inquiry as to what happened last
 11 year when you tried to work this out.

12 A. Yes.

13 Q. And it's also your understanding that the potential
 14 right of the Swap counterparties to terminate the Swap
 15 and demand a large termination payment goes back all
 16 the way to March of 2012; isn't that correct?

17 A. At least, yes.

18 Q. Thinking that's consistent with your report here --

19 A. Yes.

20 Q. -- you say that.

21 A. Yes.

22 Q. So isn't it true that from March 2012 all the way to
 23 June 4, when Mr. Buckfire went into the negotiating
 24 room for the first time with the Swap counterparties,
 25 during that entire time, the Swap counterparties had

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1 has been much debate as to the value of art versus
 2 alleviating a number of other concerns, and I've heard
 3 that debate and I've listened to it, but our first
 4 order of business is to assess what we're talking
 5 about and then we'll decide what, if anything, we need
 6 to do.

7 Q. Isn't it fair to say that you certainly haven't put
 8 the art time line, in terms of your decision-making
 9 process, you haven't given it the same sort of speed
 10 you've given to the forbearance agreement time line?

11 (MR. SHUMAKER: Object to the form.)

12 A. Yeah. I think it's fair to say that in our proposal I
 13 think we included roughly 15 buckets of assets, and
 14 none of them have been given the same priority that we
 15 deem the forbearance agreement principally because
 16 we're not in default with regard to art. We're in
 17 default with regard to the Swap agreement.

18 Q. Well, that was actually going to be my point, which
 19 is, you own the art.

20 A. Yes.

21 Q. So you don't have to negotiate with anybody in order
 22 to sell it, right?

23 A. No, but a prudent thing to do, and we've said this
 24 before, is to find out what we're talking about first,
 25 and that's why we're going through an appraisal

1 never trapped cash?

2 A. To the best of my knowledge, that's true.

3 Q. And they had never declared a termination event?

4 A. To the best of my knowledge -- to the best of my
 5 knowledge, that's true.

6 MR. HACKNEY: Mr. Orr, I'd like to thank
 7 you for your time. We have -- as I mentioned, we have
 8 divided up our examination. There are a number of
 9 different objectors here. I have attempted to
 10 coordinate some of the common subjects so that we
 11 could have --

12 THE WITNESS: Sure.

13 MR. HACKNEY: -- one 4-hour period that we
 14 have come nearly to the end of, and I'm going to pass
 15 the baton to my other objectors. I may review my
 16 notes to see if I have follow-up.

17 THE WITNESS: Sure.

18 MR. HACKNEY: And so I'll reserve my time
 19 technically, but I want to get out of the way of the
 20 other folks so they can start asking questions. And
 21 consistent with what we discussed earlier, I thought
 22 we might take a short lunch break.

23 THE WITNESS: Sure.

24 MR. HACKNEY: Off the record.

25 VIDEO TECHNICIAN: The time is 12:57 p.m.

<p style="text-align: right;">Page 241</p> <p>1 this marks the end of tape Number 3. We are off the 2 record. 3 (Recess taken at 12:57 p.m.) 4 (Back on the record at 1:48 p.m.) 5 VIDEO TECHNICIAN: We are back on the 6 record at 1:49 p.m. This marks the beginning of tape 7 number 4.</p> <p>8 EXAMINATION 9 BY MS. DiBLASI:</p> <p>10 Q. Good afternoon, Mr. Orr. My name is Kelly DiBlasi. 11 I'm an attorney at Weil, Gotshal & Manges. We 12 represent Financial Guaranty Insurance Company, which 13 people generally refer to as FGIC.</p> <p>14 A. FGIC.</p> <p>15 Q. As I go through my questions with you this afternoon, 16 if you could please assume that the same ground rules 17 that Mr. Hackney discussed with you earlier today 18 still apply.</p> <p>19 A. Yes.</p> <p>20 Q. You spoke to Mr. Hackney earlier today about the Swap 21 contract and the fact that they hedge against the 22 interest rate risks that's associated with the series 23 2006-B COPs, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And what is your understanding of how this hedge is</p>	<p style="text-align: right;">Page 243</p> <p>1 yes, I did some -- I had some discussions and analyses 2 about why they were structured the way they are. 3 Depending upon how far back your question is asking 4 about that analyses, it may or may not be true. 5 Q. So -- so let's in particular go back to 2005 -- 6 A. Right. 7 Q. -- which is really when the structure initially was 8 put in place, correct? 9 A. Yes, I believe so. 10 Q. And what is your understanding as to why in 2005 the 11 transaction was structured so that the COPs -- the 12 series 2005-B COPs had a variable interest rate hedged 13 with the Swap contracts?</p> <p>14 MR. SHUMAKER: Objection to form, 15 foundation.</p> <p>16 A. Yeah. Let me say I only know what I've read, and it 17 seemed to say that that was the nature of the 18 transaction based upon the certificates of 19 participation to lend the City ultimately the 1.4 20 billion dollars, and that I don't know the intent of 21 why they did not at that point provide for a fixed 22 rate, but I know that the Swap contract was entered 23 into the hedge against the variable rate that was in 24 the original document.</p> <p>25 BY MS. DiBLASI:</p>
<p style="text-align: right;">Page 242</p> <p>1 accomplished?</p> <p>2 A. As we discussed earlier today, depending upon the 3 interest rate fluctuations, they're supposed to 4 convert the fix rate that was in the original 5 documents -- variable rates some people say -- to a 6 fixed rate based upon whether interest rates go up or 7 down. And since the parties have essentially bet 8 against each other, depending upon which way the rates 9 go, one party may owe an obligation to the other.</p> <p>10 Q. So based on that understanding that you just 11 articulated, is it fair to say that from the City's 12 perspective, it's as if the series 2006-B COPs have a 13 fixed rate of interest?</p> <p>14 A. That was the intent. That's my understanding.</p> <p>15 Q. Have you ever heard of a structure like this being 16 referred to as creating a synthetic fixed rate of 17 interest?</p> <p>18 A. Yes. I may have heard that. There are 19 other phrase -- I think I've read that somewhere.</p> <p>20 Q. Prior to executing the forbearance agreement, did you 21 do anything to inform yourself about the structure of 22 the COPs and the Swap contracts and in particular why 23 they were structured the way that they were?</p> <p>24 A. If I can address your question in two ways, yes, I did 25 something to inform myself about the structure, and</p>	<p style="text-align: right;">Page 244</p> <p>1 Q. Would you answer the same if I asked you as to why it 2 was structured that way in 2006?</p> <p>3 A. Yes.</p> <p>4 MR. SHUMAKER: Same objection.</p> <p>5 A. Yes. I don't know the intent behind the parties at 6 that time.</p> <p>7 BY MS. DiBLASI:</p> <p>8 Q. Do you know who designed the structure either in 2005 9 or 2006?</p> <p>10 A. Other than the parties that appear on the documents, 11 no, I do not know who designed the structure. I don't 12 know if it was their counsel or the principals. No, I 13 don't know.</p> <p>14 Q. Is there any benefit to the City from having 15 the 2000 -- series 2006-B COPs have a floating rate of 16 interest hedged by the Swap contract as opposed to 17 just issuing them with a fixed rate of interest?</p> <p>18 A. I don't -- as I just said, I don't know what the 19 parties were thinking back in 2005 and 2006, as 20 opposed to -- as to why they wanted that structure, 21 and so any statement I would have would either be a 22 derivative based on what I read or speculative on what 23 I think was going on in the capital markets at that 24 time.</p> <p>25 Q. Understood. Today can you -- are you aware of any</p>

<p style="text-align: right;">Page 245</p> <p>1 benefit from that structure that I described?</p> <p>2 A. Well, the -- yes.</p> <p>3 Q. What benefits are you aware of?</p> <p>4 A. The benefit currently is, given the debt that was</p> <p>5 taken out and the Swap contract, the interest rates</p> <p>6 could actually make the optional termination payment</p> <p>7 decrease.</p> <p>8 Q. Are there any other benefits that you're aware of?</p> <p>9 A. Not principally, no.</p> <p>10 Q. Would the City have had to pay higher interest rates</p> <p>11 if the COPs were issued with fixed rates?</p> <p>12 A. I don't know.</p> <p>13 Q. Would the City have agreed to a structure where the</p> <p>14 2006-B COPs were issued with a floating interest rate</p> <p>15 without having a Swap contract in place?</p> <p>16 A. I don't know.</p> <p>17 Q. And you're aware of the fact that FGIC and Syncora</p> <p>18 each insured portions of the payment of principal and</p> <p>19 interest to the series 2006-B COPs, correct?</p> <p>20 A. That is my understanding.</p> <p>21 Q. Are you aware of any benefit to FGIC and Syncora as</p> <p>22 insurers of these variable rate certificates to having</p> <p>23 the interest rate hedge in place?</p> <p>24 MR. SHUMAKER: Objection to form.</p> <p>25 A. None, other than the fact that they might be able to</p>	<p style="text-align: right;">Page 247</p> <p>1 Q. Are you aware that when FGIC issued the policies in</p> <p>2 2006 insuring the Swap contracts, FGIC did not charge</p> <p>3 a premium in addition to the premium charged for the</p> <p>4 2006 COPs policy?</p> <p>5 A. No.</p> <p>6 MR. SHUMAKER: Objection, form, foundation.</p> <p>7 A. Yeah. No.</p> <p>8 MARKED FOR IDENTIFICATION:</p> <p>9 DEPOSITION EXHIBIT 5</p> <p>10 1:56 p.m.</p> <p>11 BY MS. DiBLASI:</p> <p>12 Q. Mr. Orr, I'm going to hand you what I've marked as Orr</p> <p>13 Exhibit 5.</p> <p>14 A. Yes.</p> <p>15 Q. The documentation is entitled Presentation to FGIC.</p> <p>16 It's dated April 26, 2005. If you'd please take a</p> <p>17 moment to look at it and tell me when you've had an</p> <p>18 opportunity to do so.</p> <p>19 A. Okay.</p> <p>20 Q. Mr. Orr, have you seen this Exhibit Number 5 before?</p> <p>21 A. I may have, but I don't recall doing so.</p> <p>22 Q. What is your sense for what this document is?</p> <p>23 A. I think the document speaks for itself, but it seems</p> <p>24 to be a SlideDeck regarding -- Presentation to FGIC is</p> <p>25 what it's titled regarding the series 2005</p>
<p style="text-align: right;">Page 246</p> <p>1 benefit based upon interest rate fluctuations, but not</p> <p>2 aware of any other benefit or what the intent of the</p> <p>3 parties were.</p> <p>4 BY MS. DiBLASI:</p> <p>5 Q. Are you aware of any harm or risk that FGIC or Syncora</p> <p>6 might insure if the Swap contracts are terminated?</p> <p>7 A. I think there are some risks that they insured as a</p> <p>8 basis of an insurer, yes.</p> <p>9 Q. What risk might that be?</p> <p>10 A. There -- in terms of the Swaps? There may be some</p> <p>11 risk that a claim could be made to the extent payments</p> <p>12 weren't made.</p> <p>13 Q. And would there be any risk to FGIC and Syncora with</p> <p>14 respect to the insurance policies on the COPs</p> <p>15 themselves if the Swap contracts are terminated?</p> <p>16 MR. SHUMAKER: Objection, calls for</p> <p>17 speculation.</p> <p>18 A. Yeah. I mean, you say there may be, but I'm -- I'm</p> <p>19 not aware of any specific certain risks, no.</p> <p>20 BY MS. DiBLASI:</p> <p>21 Q. Are you aware of the fact that FGIC and Syncora -- and</p> <p>22 I think you alluded to this just a minute ago -- that</p> <p>23 FGIC and Syncora also insured the obligations to the</p> <p>24 Swap counterparties under the Swap contracts, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 248</p> <p>1 certificates of participation.</p> <p>2 Q. In looking at it, does that refresh your recollection</p> <p>3 of whether you may have seen it before?</p> <p>4 A. No.</p> <p>5 Q. Does it appear to you that this presentation was</p> <p>6 prepared by the City of Detroit?</p> <p>7 MR. SHUMAKER: Objection, foundation.</p> <p>8 A. No. I can't say that. It has the City of Detroit</p> <p>9 logo. It's a green giant on it, but that doesn't mean</p> <p>10 it was prepared by the City of Detroit.</p> <p>11 BY MS. DiBLASI:</p> <p>12 Q. Let's turn now, Mr. Orr, to the topic of the consent</p> <p>13 rights or -- of FGIC and Syncora topic that you were</p> <p>14 discussing with Mr. Hackney earlier.</p> <p>15 A. Yes.</p> <p>16 Q. And actually, let's focus specifically on the</p> <p>17 negotiations that the City engaged in with the Swap</p> <p>18 counterparties leading up to the execution of the</p> <p>19 forbearance agreement.</p> <p>20 A. Okay.</p> <p>21 Q. And when you were speaking with Mr. Hackney, you</p> <p>22 testified that you yourself did not invite either FGIC</p> <p>23 or Syncora to those negotiations, correct?</p> <p>24 A. Yes. To the best of my knowledge, that's true.</p> <p>25 Q. And I believe you said you also didn't suggest to</p>

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- 1 anyone else that they should invite FGIC or Syncora to
 2 those negotiations, correct?
 3 A. Yes. I believe I testified I did not instruct anybody
 4 to invite them.
 5 Q. To your knowledge, did anyone else suggest inviting
 6 either FGIC or Syncora to the negotiations?
 7 A. As I testified earlier today, there were a series of
 8 letters that were exchanged, and at some point there
 9 was some discussion about Syncora submitting a
 10 proposal. That discussion was wrapped up into whether
 11 or not it would sign a reciprocal nondisclosure
 12 agreement. To the best of my knowledge, that never
 13 happened.
 14 Q. But I think we established that the letter exchanged
 15 with Syncora occurred at some point after June 11th,
 16 when there had been an agreement in principle on the
 17 economic terms of the forbearance agreement; is that
 18 correct?
 19 A. Yes. I believe we -- we testified that June 11th we
 20 reached agreement and principally documented,
 21 June 14th we had the presentation for creditors, and
 22 the letter I saw earlier today I think was dated
 23 June 17th.
 24 Q. That's right. So prior to June 11th, did anyone else
 25 to your knowledge suggest inviting either FGIC or

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- 1 Syncora to the negotiations?
 2 A. Not to my knowledge, no.
 3 Q. And you mentioned just a minute ago that there had
 4 been some discussion with Syncora or representatives
 5 of Syncora about an alternative proposal to the
 6 forbearance agreement, and I think you said to
 7 Mr. Hackney that there had been no negotiations with
 8 FGIC about an alternative proposal; is that correct?
 9 MR. SHUMAKER: Objection to form.
 10 A. Yeah, it's a compound question, but I think the way I
 11 would answer it, yes, we would talk about whether or
 12 not someone had been invited. And I think what I said
 13 is to the best of my knowledge I did not invite FGIC
 14 and I did not know if anybody else did.
 15 BY MS. DiBLASI:
 16 Q. To your knowledge, was there any negotiations by the
 17 City with FGIC about the forbearance agreement prior
 18 to the City executing the forbearance agreement?
 19 A. There may have been. I seem to recall one of our
 20 attorneys -- you used the word negotiation and, here
 21 again, as I said earlier today, without getting caught
 22 up in the nomenclature, I don't want to characterize
 23 what was going on, but I think there was -- I remember
 24 hearing something about some discussions with FGIC,
 25 but I don't recall who. Whether or not there were

- 1 negotiations would have to be determined.
 2 Q. So I think you said you -- you thought maybe it was
 3 someone from your -- Jones Day who had initiated or
 4 who had participated in -- in this discussion?
 5 A. Yes. I believe someone on the finance side at Jones
 6 Day, yes. They may have. I seem to recall some
 7 discussion about they had had discussions with FGIC.
 8 Q. Do you have any recollection as to when that took
 9 place?
 10 A. I do not. It may be prior to the July -- June 11th
 11 agreement in principle after, but I don't have a
 12 specific recollection.
 13 Q. When you were speaking with Mr. Hackney about the
 14 negotiations with the Swap counterparties that you
 15 personally took part in, I believe you said that you
 16 had participated in a number of conference calls; is
 17 that correct?
 18 A. Yes.
 19 Q. Was FGIC or a representative of FGIC on any of those
 20 conference calls?
 21 A. No. The conference calls I was referring were
 22 conference calls between me and my attorneys. There
 23 were conference calls that I had with Mr. Buckfire and
 24 a principal on behalf of Syncora, but to the best of
 25 my knowledge, there weren't FGIC representatives on

- those calls.
 2 Q. So you were not on any conference calls with the Swap
 3 counterparties negotiating the terms of the
 4 forbearance agreement?
 5 A. Yes. Yeah, I -- let me correct myself.
 6 Q. Sure.
 7 A. I said -- I just said Syncora. I think I meant the
 8 Swap counterparties.
 9 Q. Okay.
 10 A. There were no conference calls. There were letters
 11 with Syncora, not conference calls with Syncora.
 12 Q. Just so I'm clear in my understanding, did you
 13 participate in conference calls with the Swap
 14 counterparties negotiating the terms of the
 15 forbearance agreement?
 16 A. Yes.
 17 Q. Was FGIC or a representative of FGIC on any of those
 18 conference calls?
 19 A. No. To the best of my knowledge, no.
 20 MS. DiBLASI: Thank you for your time,
 21 Mr. Orr. That's all I have.
 22 THE WITNESS: Sure. Thank you very much,
 23 Mrs. DiBlasi.
 24 MR. HACKNEY: I was worried that I missed a
 25 pretty significant area of inquiry there.

1 THE WITNESS: I was looking at this letter
 2 and Syncora popped into my head, so that's -- long
 3 day.

4 EXAMINATION

5 BY MR. MARRIOTT:

6 Q. Good afternoon, Mr. Orr.

7 A. Good afternoon.

8 Q. I'm Vince Marriott. I'm with Ballard Spahr, and I
 9 represent a holder of 152 million dollars in the 2006
 10 COPs. We refer to it by agreement as EEPK, and I hope
 11 we can stipulate that I will have to pronounce the
 12 entire name for you.

13 MR. SHUMAKER: Stipulated.

14 A. Mr. Marriott, we will stipulate as such.

15 BY MR. MARRIOTT:

16 Q. Ironically enough it's German.

17 A. We wouldn't try.

18 Q. Mr. Hackney was very comprehensive and I don't have a
 19 lot.

20 A. Okay. Yes, he was.

21 Q. One of the things you -- one of the things Mr. Hackney
 22 asked you about was if in the course of the
 23 negotiation of the forbearance agreement, you had what
 24 he referred to as a plan B. Do --

25 A. Right.

1 need for the casino revenue, which was urgent and
 2 critical and would not in our opinion at that point be
 3 able to make a reinvestment of the City, what would
 4 the City look like going forward.

5 Q. Let me ask you the question this way. Did you
 6 consider what I'll describe -- and if you want me to
 7 be more specific I can try to be.

8 A. Um-hm.

9 Q. Did you consider capital market alternatives to the
 10 forbearance agreement?

11 A. We did, but to be perfectly honest with you, the City
 12 had borrowed so much money from the capital markets
 13 without the probability of being able to pay it back
 14 on any reasonable or rational time frame that that
 15 wasn't a serious consideration was taking on more
 16 debt.

17 Q. Okay. So you didn't really believe that had you a
 18 what we -- what I just described as a capital market
 19 alternative to the forbearance agreement?

20 A. The City has no -- what I've said at the June 10th --
 21 public meeting on June 14th we were addicted to debt
 22 and we had no ability to take on additional debt.

23 Q. Okay. All right. And this may re-plow some ground
 24 and I apologize to the extent it does, but in the
 25 context of your negotiation of the forbearance

1 Q. -- you recall him asking that question?

2 A. Yes, I recall that discussion. Yes.

3 Q. And you responded by saying, without specifically
 4 having a plan B, you had considered alternative to the
 5 forbearance agreement structure, correct?

6 A. Correct.

7 Q. Can you tell me what alternatives to the forbearance
 8 agreement you considered at the time?

9 A. Without getting into the discussions with my counsel
 10 or with commercially sensitive information with the
 11 investment banker and/or both, the alternatives
 12 generally centered on the need for reinvestment in the
 13 City and what we would do if we could not secure the
 14 funds to have that reinvestment and what kind of
 15 reinvestment proposal, if any, we could put together.

16 Q. And are you able to articulate more specifically
 17 whether you consider -- or what specifically you
 18 considered as alternative source of the funding for
 19 reinvestment?

20 A. I think as I said with Mr. Hackney just before the
 21 break, I have said fairly consistently since I've been
 22 here that everything's on the table, but we had not
 23 specifically looked at liquidation of any particular
 24 bucket of assets in relation to this. All we had
 25 considered was if we could not secure the critical

1 agreement, and by yours I mean the City's --

2 A. Yes.

3 Q. -- it was with the understanding that the Swap
 4 counterparties asserted a lien in the casino revenues,
 5 right?

6 A. Yes.

7 Q. Would the City have entered into the forbearance
 8 agreement with the Swap counterparties if they did not
 9 assert a lien in the casino revenues?

10 MR. SHUMAKER: Objection, calls for
 11 speculation.

12 A. Yeah. I was going to say that's a hypothetical, and
 13 it would depend on a number of different issues, so
 14 I'm not quite sure I can answer you. All I can say is
 15 that our need for that cash was so significant that we
 16 might well have considered anything.

17 BY MR. MARRIOTT:

18 Q. All right. Let me ask the question this way then. Is
 19 it fair to say that the optional termination amount of
 20 pay will be paid by the City to obtain clear title to
 21 the casino revenues?

22 MR. JURGENS: Objection to form.

23 MR. SHUMAKER: Objection, form and calls
 24 for legal conclusion.

25 A. Without getting into the concept of title, what I will

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1 say, and what I've said today, is the forbearance
 2 agreement is designed to remove uncertainty with
 3 regard to the City's access to the casino revenue
 4 which is essential.

5 BY MR. MARRIOTT:

6 Q. All right. Let me ask the question this way. Is it
 7 your understanding that the Swap counterparties will
 8 no longer assert a lien in the casino revenues if paid
 9 the optional termination amount?

10 MR. JURGENS: Objection --

11 A. Yes.

12 MR. JURGENS: -- to form.

13 A. It's my understanding that it's going to resolve all
 14 those issues, and as I said earlier today, including a
 15 release of liens to the extent they have any.

16 BY MR. MARRIOTT:

17 Q. Okay. Now, I understand your description of the
 18 City's current operational needs --

19 A. Right.

20 Q. -- for access to the casino revenues.

21 A. Yes.

22 Q. If those casino revenues were otherwise available to
 23 the City, for current operation's purposes, would
 24 removal of the lien be necessary -- or removal of the
 25 asserted lien be necessary?

1 A. Um-hm.

2 Q. -- necessary for the City to currently operate?

3 A. To currently operate?

4 Q. Yes.

5 MR. SHUMAKER: Object to the hypothetical.

6 Go ahead.

7 A. If you're drawing a distinction between currently
 8 operating and the reinvestment plan that we have, what
 9 I would say is we are currently operating in the
 10 status quo. So the answer to your question would be
 11 to the extent the Swap counterparties have a lien
 12 interest in the casino revenue, it would not be
 13 necessary because that's where we are now.

14 BY MR. MARRIOTT:

15 Q. Okay. And so what do you view release of the lien as
 16 necessary to?

17 A. The release of the lien is essential so that the City
 18 has certainty in terms of going forward so that we can
 19 plan, as is required both under Chapter 9, but more
 20 importantly, in my perspective, under Chapter -- under
 21 Public Act 436.

22 436 imposes an obligation on me within
 23 18 months to come up with a plan to put the City on a
 24 sustainable footing going forward before the
 25 expiration of my term, and even if you could come up

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1 MR. SHUMAKER: Objection, calls for
 2 speculation.

3 A. Yeah, this again is a hypothetical question, but I
 4 believe you may be alluding to the discussion I had
 5 with Mr. Hackney regarding whether the stay would
 6 provide us unfettered access, and I think what I said
 7 there is that's something we'd have to examine, but
 8 the whole concept of the forbearance agreement was to
 9 deal with removing any uncertainty regarding our
 10 access to the casino revenues so that we could put in
 11 place a reinvestment plan.

12 BY MR. MARRIOTT:

13 Q. Okay. I wasn't clear, I don't think --

14 A. Okay.

15 Q. -- in what I'm trying to get at.

16 A. Sure.

17 Q. I'm not asking you whether or not there was an
 18 alternative to releasing -- I'm just asking whether
 19 you believe there was a legitimate alternative to
 20 release of the lien to get access to those funds.

21 What I'm asking you is that assuming you
 22 had access to those funds on some basis, without the
 23 need to release the lien --

24 A. Um-hm.

25 Q. -- is a release of the lien today --

1 with a plan without release of those liens, that would
 2 leave some uncertainty and would be, in my opinion, a
 3 violation of my duty as emergency manager to provide
 4 that certainty for the City to move forward in a
 5 sustainable fashion.

6 Q. Okay. So and if I'm paraphrasing your answer
 7 incorrectly --

8 A. Right.

9 Q. -- tell me.

10 Release of the lien is necessary to a
 11 viable exit strategy from the Chapter 9 proceeding?

12 A. That's part of it. Not just the Chapter 9 proceeding.
 13 As I said, I think what's missing in some of the
 14 discussion is the fact that I have an independent duty
 15 under Public Act 436 to put the City on a sustainable
 16 footing. That is my obligation. And leaving liens in
 17 place in a City that has defaulted, as we discussed
 18 earlier today, under multiple different factors would
 19 be irresponsible.

20 Q. One of the other things that Mr. Hackney and you
 21 discussed was whether or not the Swaps and the COPs
 22 and the insurance associated with the Swaps and the
 23 cops --

24 A. Right.

25 Q. -- were what Mr. Hackney described as an integrated

<p>Page 261</p> <p>1 transaction. 2 A. Um-hm. 3 Q. Do you recall that discussion? 4 A. Yes, I do recall that discussion. 5 Q. Your counsel in a hearing on August 21st -- and I'll 6 represent this to you -- 7 A. Okay. 8 Q. -- whether you're aware of it or not. It described 9 the 2009 transaction with respect to the COPs and the 10 Swaps as severing the tie -- 11 A. Um-hm. 12 Q. -- Between the COPs and the Swaps. Do you have an 13 understanding of what that means? 14 MR. SHUMAKER: Objection to form. 15 A. I have not consulted with my counsel regarding what 16 was meant by that statement, so I'm going to qualify 17 my answer by saying to the extent it calls for a legal 18 conclusion or an analysis, that this is my 19 understanding in a layman's sense. 20 But what I think -- and your question began 21 with the concept of the insurance for the COPs and 22 Swaps, so I also want to say my understanding there 23 may be different insurance obligations related to the 24 COPs that in our view are unrelated to the obligations 25 under the Swaps. I don't want to conflate the two.</p>	<p>Page 263</p> <p>1 Q. Yeah. So I'm from Arent Fox? 2 A. Okay. 3 Q. And this time I reco -- I represent Ambac. 4 A. Okay. 5 Q. Okay? 6 A. Okay. 7 Q. I'm going to apologize in advance if I jump 8 around a little bit or seem to jump around because I'm 9 going to try to plug some holes from your earlier four 10 and a half hours of testimony that you've given 11 already. 12 A. Thank you. 13 Q. Okay. Same rules apply, right? 14 A. Yes. 15 Q. Okay. This is a small question. Earlier in response 16 to Mr. Hackney, his questioning, he asked you a 17 question about the collateral agreement and your 18 response was which collateral agreement. 19 A. Um-hm. 20 Q. I want to make sure. Is there any other collateral 21 agreement other than the 2009 collateral agreement 22 we've spoken about? 23 A. No. I just think that was earlier on in my deposition 24 by Mr. Hackney, and I just wanted to make sure we were 25 being specific about the terms. I wasn't meaning to</p>
<p>Page 262</p> <p>1 And further, anything I can say in that 2 regard, because I have not talked to my counsel, would 3 be speculative as far as what they meant. Okay? But 4 what my understanding is, is that that would relieve 5 us under the agreement, forbearance agreement, of any 6 of the obligations that are necessary under the Swaps. 7 I sincerely don't know what that statement means with 8 regard to the COPs. 9 BY MR. MARRIOTT: That's all I have. Thank 10 you. 11 THE WITNESS: Thank you, sir. 12 EXAMINATION 13 BY MS. ENGLISH: 14 Q. Hi, there. 15 A. Hi. How are you? 16 Q. Good. How are you? 17 A. I am well. Thank you. 18 Q. I'm Caroline English. 19 A. Hi, Caroline. 20 Q. We met before in the Chrysler case and I don't know if 21 you recall. 22 A. Oh, you know -- 23 Q. We can talk later. It's all right. 24 A. Yeah. We will talk later. I was going to say I 25 recognized you over there.</p>	<p>Page 264</p> <p>1 allude to another collateral agreement. 2 Q. That's fine. I just wanted to make sure I -- 3 A. Sure. 4 Q. -- didn't miss a large transactional document here. 5 Okay? 6 A. Sure. 7 Q. Mr. Hackney also asked you some questions about the 8 service corporations and about whether there were any 9 negotiations on behalf of the City with the service. 10 Corporations? 11 A. Yes. 12 Q. Okay. I believe you answered that negotiating with 13 service corporations would not have been your job. It 14 would have been Ken Buckfire's or someone else's job 15 to do that. 16 A. Yes. I believe that's right. 17 Q. Okay. If it wasn't Ken Buckfire's job, who else's job 18 would it have been? 19 A. It might have been someone else on his team or at 20 Miller Buckfire or someone else on behalf of the other 21 counsel for the emergency manager or the City. 22 Q. Someone else in your office you mean? 23 A. No. No. Other consultants and attorneys on behalf of 24 the City. 25 Q. Okay. But am I correct that no one has reported to</p>

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1 you that they had negotiations with the service
 2 corporations; is that correct?

3 A. Yeah, reported. I'm going to be careful. My
 4 understanding was we had an agreement, I signed it,
 5 and it was sent to the service corporations. I
 6 personally had no negotiations with them, but my
 7 understanding, based upon the fact it was executed,
 8 that whoever needed to procure and secure those
 9 signatures did so.

10 Q. You don't know who got those signatures from the
 11 service corporations?

12 A. No. Sitting here today I do not.

13 Q. You also testified earlier -- Mr. Hackney's helping me
 14 out here.
 15 Do you -- are you assuming then that there
 16 were some negotiations between the City and the
 17 service corporations?

18 A. Yeah. Here again, I'm going to say whenever you -- as
 19 I said to Mr. Hackney, whenever you talk about
 20 negotiations, you know, so we don't get bogged down in
 21 nomenclature, I'm assuming that something happened
 22 that had the service corporations aware of the
 23 agreement, that they agreed to and they signed off on
 24 it. So if those constitute negotiations, that's what
 25 I'm assuming, but I'm saying to you that I had no

1 Q. Let me back you up to the start of your answer, which
 2 was that my predicate you did not believe to be true.

3 A. Yes.

4 Q. So let me ask you a question. To your knowledge was
 5 any request of any kind ever made to the State for
 6 aid?

7 A. Here's -- I'm not trying to be evasive, but here's the
 8 issue I'm having with your question. It's not so much
 9 if there was ever a request. As I said earlier today,
 10 I have regular discussions with the governor and other
 11 officers on behalf of the State, and it became clear
 12 to us in terms of whether or not it was made -- a
 13 request seems to suggest that we asked the State for
 14 money and they said no, and what I'm saying to you is
 15 we had a discussion that even if that was an
 16 alternative in some fashion, me or a representatives
 17 on my behalf -- I don't remember -- that the State
 18 couldn't do that in any event, so I'm not sure there
 19 was a request made. What I'm trying to say is that it
 20 became clear that that was not an option.

21 Q. In other words, it became clear to you that making any
 22 such requests would have been futile.

23 A. Yeah, I'm staying away from request. It just became
 24 clear that the State couldn't do that, yes, one way or
 25 the other.

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1 independent negotiations and I don't know who did
 2 that.

3 Q. And you don't have any idea sitting here today about
 4 what those negotiations would have involved, how they
 5 happened, when they happened, how long they took,
 6 anything like that; is that right?

7 A. That's right.

8 Q. You testified earlier about state aid and federal aid,
 9 the possibilities of getting aid from other government
 10 sources.

11 A. Yes.

12 Q. With respect to state aid, when did the City make a
 13 request of any kind to the State for aid?

14 MR. SHUMAKER: Objection, foundation.

15 A. Assuming the predicate that some request was made,
 16 which I don't think is true, what became clear from
 17 various discussions with the State was that this was a
 18 hole that the City had dug for itself and it needed to
 19 find its way out of it on its own.

20 I think at some point we were also informed
 21 that there are State prohibitions against the State
 22 lending money to the City, either state ordinances --
 23 State statutes or constitutional prohibitions, so that
 24 would not have been a possibility in any event.

25 BY MS. ENGLISH:

1 Q. All right. I have the same questions about federal
 2 aid, and let me start again with the predicate. Was a
 3 request ever made of any kind for federal government
 4 aid?

5 A. Not by me. Not for -- well, let me correct that. Not
 6 for direct federal government aid in the terms of
 7 either a loan or a grant, meaning money. I did have a
 8 meeting with Senator Levin where he informed me and
 9 actually gave me a list of a number of different grant
 10 programs, ordinary grant programs, that are available
 11 to the City, as well as other cities, by which we
 12 could apply for additional grants and we're reviewing
 13 those now.

14 So I want to be clear when people say
 15 federal aid, it became clear to us that no one was
 16 going to give us, for lack of a better word -- people
 17 use the word bailout, which I don't like -- but a
 18 direct grant of money, but there are other programs
 19 that the City can apply for to get federal assistance.

20 Q. Okay. With respect to the federal grant programs you
 21 just mentioned, at this point in time, have any
 22 applications been submitted for any of these grant
 23 programs?

24 A. At this point in time, there may -- there may be. We
 25 received that a couple weeks ago and I know two things

1 as has been reported. We're currently doing an
 2 analysis of our grants administration and application
 3 process to make it better, and I think we're also
 4 reviewing it for making specific grant requests, I
 5 think some specifically related to public safety.

6 So I don't know if -- sitting here today if
 7 actual documents have been submitted, but I know we
 8 are mining the federal programs with an eye toward
 9 making applications and some have been made or some
 10 are near to being made.

11 Q. Are there specific grants you're targeting in this
 12 application process?

13 A. That's handled by the folks in the City bureaucracy
 14 and consultants, so I -- as I said, health, safety and
 15 welfare, meaning police, fire, EMT, City grants
 16 meaning blight, HUD grants and others, yes, but
 17 sitting here today, I don't know which specific ones
 18 have been submitted.

19 Q. And who was handling that process?

20 A. Ultimately, in my office, it would be a combination of
 21 the existing -- hopefully in the City as well --
 22 existing grant procurers, you know, whether they're at
 23 different departments in planning and development,
 24 police and fire. It would be at that level, at a line
 25 level, would be applying for grants.

1 A. You asked me if there were any new ones going in.
 2 Q. Okay.
 3 A. We -- the City has received, in past years and
 4 currently, almost 300 million dollars in federal
 5 grants.

6 Q. Okay.

7 A. Okay. We hoped -- and they're being administered
 8 through 71 different programs in the City. I think
 9 that's been publicly discussed before. We hope to
 10 apply for even more grants. So I can be clear, what
 11 we are trying to do is to get some assistance so that
 12 we can get better at this process, this administration
 13 application process, so we would be eligible for more
 14 federal assistance that's already existing.

15 Q. And how much do you estimate that more federal
 16 assistance to be?

17 A. I have no idea. Whatever -- whatever we can get. If
 18 it's several millions more, if it's several hundreds
 19 millions more, we're going to apply for it.

20 Q. Do you think it's a possibility it could be hundreds
 21 of millions more?

22 A. Possibility it could be.

23 Q. Earlier in your testimony you were asked a lot of
 24 questions about legal analyses or legal claims that
 25 might have been made, and on those questions you

1 Q. Is that going to happen under your supervision?

2 A. I certainly hope so, yes.

3 Q. Do you have any idea of how much money in grant
 4 programs might be available to the City?

5 A. Well, the City has already applied of somewhere in the
 6 neighborhood of 300 million in 71 programs. We have
 7 been told that none of those 71 programs are in
 8 compliance. Some of those programs we're receiving
 9 technical assistance from HUD --

10 COURT REPORTER: I need you to slow down.

11 THE WITNESS: I'm sorry.

12 A. Some of those programs we're receiving technical
 13 assistance, for instance, from HUD, and our intent is
 14 to get our grants administration and application
 15 process more up to date and streamlined so we can
 16 apply for as many grants as we can possibly get our
 17 hands on.

18 BY MS. ENGLISH:

19 Q. Okay. You confused me there for a minute because
 20 you've said you've got a bunch of grant applications
 21 already in with respect to programs that are
 22 noncompliant, but I thought you said earlier you don't
 23 have any grant applications in.

24 A. No, no, no.

25 Q. Okay.

1 claimed attorney-client privilege --

2 A. Yes.

3 Q. -- and said that you didn't have an independent view
 4 that didn't come from attorney-client communications.

5 A. Yes.

6 Q. Okay. I want to ask, without divulging what the
 7 advice was of your counsel, can you just list for me
 8 what the topics were on which you got advice, or would
 9 you claim the privilege as to just the topics as well?

10 A. Maybe I can do it this way. I think I've said before
 11 that in this case, for instance, your client has filed
 12 an objection.

13 Q. Yes, it has.

14 A. And in this case many objections have been filed and
 15 many of the topics listed in those objections, and I
 16 think I said with Mr. Hackney, whether it was
 17 subordination, prioritization, equitable estoppel,
 18 tort, invalidation of liens ab initio, whatever they
 19 were, none of those analyses or claims came as a
 20 surprise to me and that in some fashion -- without
 21 divulging what I had spoken with to my counsel, in
 22 some fashion issues such as those had been discussed
 23 and analyzed with my counsel, attorneys and advisors.

24 Q. So, for example, if -- as you know, Ambac filed an
 25 objection, and --

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- 1 A. Yes.
- 2 Q. -- one of the arguments raised was whether the Swap
3 obligations themselves were void ab initio because
4 they did not comply with Act 34.
- 5 A. Yes.
- 6 Q. You're familiar with that argument that we raised?
- 7 A. Yeah.
- 8 Q. Can you -- and again without asking -- I'm not asking
9 you to divulge what the advice was or what the
10 analysis was you got from your counsel, but can you
11 tell me what issues, just by naming the topics, you
12 sought advice on with respect to that argument?
- 13 MR. SHUMAKER: Well, the seeking of advice
14 somewhat implicates communications. If you were to
15 look at topics perhaps as to whether he regarding your
16 objection whether he -- they were raised, without
17 going into the communications, I think he could
18 respond to that.
- 19 BY MS. ENGLISH:
- 20 Q. That's exactly what I'm asking.
- 21 A. Okay. Well, for instance, whether or not arguments
22 such as that would erase the obligation in toto or
23 subordinate it to a lower level, whether or not an
24 obligation like that would raise defenses on behalf of
25 the obligor of equitable estoppel to the City, whether

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- 1 prepared, analyses, I can't give you a compendium or
2 an exhaustive list of things that were considered, so
3 I don't want to leave you with the misimpression that
4 somehow the analysis wasn't complete or we didn't
5 consider more issues than the one I did. We did.
6 Those are just the ones that came, sitting here,
7 today -- you asked me a question -- off the top of my
8 head that I remembered for instance.
- 9 Q. Did you have legal analysis done on whether the Swaps
10 transactions complied with Act 34?
- 11 A. As I said, without getting into discussions with my
12 counsel, a whole panoply of issues, some of which are
13 contained in the objections filed, including those
14 filed by your client, were examined.
- 15 Q. Okay. Now can you answer my question? Did you have
16 legal analysis done on whether the Swap transactions
17 complied with Act 34?
- 18 A. As I said --
- 19 MR. SHUMAKER: Objection, asked and
20 answered.
- 21 A. As I said --
- 22 MR. SHUMAKER: If you want to share with
23 him the argument, that might help.
- 24 A. There are a whole panoply of issues, some of them
25 contained in the objections such as the one filed by

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- 1 or not there are facts surrounding those documents and
2 liens that would equitably raise issues as far as
3 their validity beyond void ab initio, whether or not
4 the law in the district and the circuit supported a
5 clean remedy that could be easily obtained, and
6 whether or not it would be expensive and extensive
7 litigation and appeals over a period of time, things
8 such as those were discussed and examined.
- 9 Q. When you say whether there were equitable issues, what
10 do you mean by that?
- 11 A. Here again, without going into discussion, any of the
12 concern -- equity is -- implicates action such as
13 clean hands. Whether there were issues surrounding
14 the City's conduct and issues along those lines, that
15 would be factually intensive and lead to, for
16 instance, increased litigation costs which I think is
17 mentioned in our motion or some of the papers we
18 filed, things along those lines, general equitable
19 concerns.
- 20 Q. When you just listed for me the types of concerns and
21 topics you were exploring with counsel, you didn't
22 mention Act 34.
- 23 A. Well, as I said, I said for instance. I didn't mean
24 for it to be an exhaustive list, and that's why
25 without sitting here today, counsel, memos that were

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- 1 your client which were examined and reviewed.
- 2 BY MS. ENGLISH:
- 3 Q. Was Act 34 one of them?
- 4 A. More than likely, yes.
- 5 Q. More than likely? You don't know?
- 6 A. No. Sitting here today, I just said to you, for
7 instance, that many of the issues, without being a
8 compendium or being exhaustive, were examined. Act 34
9 was probably one of them. I did not mean for my
10 testimony to be exhaustive because I don't have the
11 analyses or the benefit of discussing them with my
12 client prior to your question today.
- 13 Q. I do understand the answers that you're giving me.
14 They're just not quite answers to the questions I'm
15 asking.
- 16 A. Okay.
- 17 Q. So let me -- in your answer right now when I was
18 trying to hone in on was Act 34 --
- 19 A. Um-hm.
- 20 Q. -- examined, right?
- 21 A. Yes.
- 22 Q. You said probably.
- 23 A. Yes.
- 24 Q. So you're not sure?
- 25 A. No. I said --

<p style="text-align: right;">Page 277</p> <p>1 MR. SHUMAKER: Objection, asked and 2 answered.</p> <p>3 A. I'll say it again. Probably means that it was, but I 4 don't want my answer to represent to you that it was a 5 compendium. If you want to keep asking me about Act 6 34, that's fine, but I said more likely than not it 7 was examined. I -- just sitting here right now, I 8 don't have an independent recollection of all the 9 things we examined. Act 34 was more than likely one 10 of them.</p> <p>11 BY MS. ENGLISH:</p> <p>12 Q. Okay. But sitting here today you don't have an 13 independent recollection for sure that Act 34 was 14 looked at; is that correct?</p> <p>15 A. I just said --</p> <p>16 MR. SHUMAKER: Objection, asked and 17 answered.</p> <p>18 A. I just said it's more likely than not.</p> <p>19 BY MS. ENGLISH:</p> <p>20 Q. Sitting here today do you have a recollection as to 21 whether there was legal analysis done as to the 22 validity of the pledge of casino revenues under the 23 gaming act?</p> <p>24 A. I thought you just asked -- well, suffice it to say I 25 believe so.</p>	<p style="text-align: right;">Page 279</p> <p>1 counterparties?</p> <p>2 A. Not without the advice of counsel, no.</p> <p>3 Q. Why didn't the City just sue the Swap counterparties 4 and then negotiate from there?</p> <p>5 A. You know, one of the things that we have, both in 6 bankruptcy and in Public Act 436, is that in the 7 deliberative process the emergency manager has 8 discretion to make decisions, business judgment 9 decisions, within that discretion, irrespective of 10 third parties, the decisions as to how that should 11 have occurred.</p> <p>12 We made a decision in consultation with 13 counsel that this was the best way to proceed. 14 Commencing litigation might well have created a 15 cascade of other events such as the very event we are 16 trying to avoid which is trapping the casino revenue 17 for time and a number of months and/or years which 18 would have made the probability of me completing my 19 mission within the time frame of the statute 20 difficult.</p> <p>21 Q. If the City couldn't get a deal such as the 22 forbearance agreement, was the City prepared to sue 23 the Swap counterparties then?</p> <p>24 MR. SHUMAKER: Objection to the extent that 25 question is asking for attorney-client privileged</p>
<p style="text-align: right;">Page 278</p> <p>1 Q. You believe so?</p> <p>2 A. Yes.</p> <p>3 Q. Are you sure?</p> <p>4 A. I believe so.</p> <p>5 Q. Are you sure?</p> <p>6 A. I believe so.</p> <p>7 MR. SHUMAKER: Objection, asked and 8 answered.</p> <p>9 BY MS. ENGLISH:</p> <p>10 Q. Do you recall seeing a legal analysis or memo that was 11 prepared with respect to the validity of the pledge of 12 casino revenues under the gaming act?</p> <p>13 A. Ms. English, I see -- I see a lot of memos. As I said 14 before this line of questioning, it's more likely than 15 not that I did, but sitting here today, in an effort 16 to be accurate, I don't specifically recall all of the 17 issues we examined. More likely than not, it included 18 Act 34, it included validity of liens.</p> <p>19 COURT REPORTER: It included validity --</p> <p>20 THE WITNESS: Validity of liens.</p> <p>21 COURT REPORTER: Thank you.</p> <p>22 BY MS. ENGLISH:</p> <p>23 Q. Did you make an independent assessment apart from 24 advice of counsel as to the strengths -- strengths or 25 weaknesses of the City's claims against the Swap</p>	<p style="text-align: right;">Page 280</p> <p>1 communication. I'll object.</p> <p>2 If you have some independent understanding, 3 you can answer.</p> <p>4 A. Mrs. English, I'll say this. Without getting into 5 communications with my counsel, we examined all 6 alternatives, and as I said earlier with Mr. Hackney, 7 including potential litigation.</p> <p>8 BY MS. ENGLISH:</p> <p>9 Q. If you hadn't gotten a deal, were you prepared to sue 10 them then?</p> <p>11 MR. SHUMAKER: Objection, calls for 12 speculation.</p> <p>13 A. Yeah, I was going to say. I don't know. We'd have to 14 examine the situation on the ground at that time.</p> <p>15 BY MS. ENGLISH:</p> <p>16 Q. Okay. Let me ask you this. If the forbearance 17 agreement is not approved by the bankruptcy court, 18 will the City then sue the Swap counterparties?</p> <p>19 MR. SHUMAKER: Objection, calls for 20 speculation.</p> <p>21 A. Here again, it's a different version of the prior 22 question which it calls me to speculate as to what we 23 would do if the Court does not approve the agreement.</p> <p>24 BY MS. ENGLISH:</p> <p>25 Q. If there were to be litigation with the Swap</p>

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1 counterparties, do you have some sense as to what
 2 claims might be asserted against the Swap
 3 counterparties?

4 MR. SHUMAKER: Objection, asked and
 5 answered.

6 A. Yeah, as we said before, those are discussions that
 7 I've had with my counsel. I would consult with them
 8 as to our possible -- I can't tell you in direct
 9 response to your question and this line of questioning
 10 what we would do. What I can tell you is that we
 11 would engage in a process of examining what our
 12 alternatives were and try to make an informed and
 13 reasonable decision based upon the information we had
 14 at that time.

15 BY MS. ENGLISH:

16 Q. Okay. So sitting here today you are not able to tell
 17 me even a single claim that the City might assert
 18 against the Swap counterparties?

19 A. There are a number of claims that the City might
 20 assert. As I said earlier today, some of them might
 21 be framed in some of the objections. Whether or not
 22 we would ultimately assert those, depends upon a
 23 number of different factors that we would have to
 24 examine at that point.

25 Q. Well, in the forbearance agreement, the City is giving

1 would say that, as I said before this afternoon, there
 2 was analysis of the potential claims, strengths and
 3 weaknesses and options available to the City.
 4 Those -- some of those were prepared in writing, yes.

5 Q. You just mentioned a draft complaint. Was there ever
 6 a draft complaint prepared?

7 MR. SHUMAKER: I think you mischaracterized
 8 what he said. That's my objection.

9 A. Yeah, as I said, some of those types of things could
 10 include a draft complaint. I don't recall seeing a
 11 draft complaint.

12 BY MS. ENGLISH:

13 Q. Do you recall seeing a memo that outlined strengths
 14 and weaknesses of claims that could be asserted in a
 15 complaint?

16 A. As I said before, I think there were memorandum and
 17 advice that was given regarding the various claims,
 18 defenses and alternatives available to the City which
 19 could have included a memorandum of the nature you're
 20 talking about.

21 Q. It could have included it --

22 A. It could.

23 Q. -- but you're not sure whether it did or not?

24 A. Sitting here today I don't specifically remember all
 25 the memos that would fit the description that you're

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1 up the right to assert claims against the Swap
 2 counterparties, correct?

3 A. If the forbearance agreement is approved and we
 4 ultimately execute on the agreement, then yes, the
 5 parties would forebear and would not sue each other.

6 Q. Right. So all I'm asking is give me one example of
 7 one claim you're giving up in the forbearance
 8 agreement.

9 A. I suppose any of the claims that have been implicated
 10 in some of the objections that have been filed and, as
 11 I said earlier today, some of those claims which is
 12 the ones we discussed a few minutes ago, such as
 13 estoppel, ab initio and those others.

14 Q. Did any of your legal counsel ever prepare a memo or a
 15 written analysis for the City that outlined a
 16 litigation strategy against the Swap counterparties?
 17 I'm not asking what would have been in it, if there
 18 was one. I just want to know if there was any written
 19 analysis ever prepared that outlined a litigation
 20 strategy.

21 A. Well, without, here again, drawing into the
 22 nomenclature of a litigation strategy, because that
 23 can mean a number of different things, including up --
 24 up to and through attaching a proposed complaint, for
 25 instance, without getting into the nomenclature, I

1 making. There were memos discussing the various
 2 strengths and weaknesses of the positions.

3 Q. Did you have any analysis done as to the cost of a
 4 litigation with the Swap counterparties?

5 A. No. I don't recall if any of the documents included
 6 costs. We -- there were discussions about the
 7 potential costs and the timing, but I don't recall if
 8 any of the documents did.

9 Q. Okay. What was your best estimate as to how much a
 10 litigation with Swap counterparties would cost the
 11 City?

12 A. I don't -- I don't remember what the best estimates
 13 were. They -- they ranged from --

14 MR. SHUMAKER: Object. I just want to make
 15 sure you're not going to be revealing any
 16 attorney-client communications with your answer.

17 THE WITNESS: Okay.

18 MR. SHUMAKER: I'll interject that. I'll
 19 let you answer the question as to whether that was
 20 addressed. I don't want you to go --

21 THE WITNESS: Okay.

22 MR. SHUMAKER: -- into anything --

23 THE WITNESS: Okay.

24 MR. SHUMAKER: -- beyond that.

25 A. It was addressed, and suffice it to say I think it's

1 fair to assume that in litigation in the nature you're
 2 discussing that it could go into millions of dollars.

3 BY MS. ENGLISH:

4 Q. How about the time it would take to litigate the Swap
 5 counterparties? Did you estimate how long it would
 6 take?

7 MR. SHUMAKER: Same admonition.

8 A. Let's -- let's do it this way. I think it's fair to
 9 say that there were discussions regarding the time for
 10 litigation and/or appeals and the costs that were
 11 involved if that tack was taken.

12 BY MS. ENGLISH:

13 Q. How long did you estimate it would take to litigate
 14 with Swap counterparties?

15 A. I'm not sure the predicate is there that I estimated
 16 the length of time.

17 Q. Okay. If you didn't estimate the length of time,
 18 that's an okay answer to give.

19 A. Yeah. I'm trying to be as clear as I can for you and
 20 say that there were discussions, but there's nothing
 21 as specific as the lodestar method of analysis which
 22 you understand is time times hours billed, so on and
 23 so forth. There were discussions and there were
 24 analyses about what it could be.

25 Q. Now, I have to unpack that a little bit because you

1 Q. Did you have a lodestar analysis performed with
 2 respect to a litigation with the Swap counterparties?

3 MR. SHUMAKER: Again, I'm going to object.

4 I believe that that question asks the -- asks Mr. Orr
 5 to reveal privileged attorney-client communications
 6 when you get into specific lodestar analysis.

7 BY MS. ENGLISH:

8 Q. I don't want the analysis. I just want to know
 9 whether had you one done because you mentioned it.

10 A. I did mention it, but, here again, I think my response
 11 was that there was an analysis that was done. I'm not
 12 sure. I don't recall if it was as specific as the
 13 type of lodestar analysis to give you an example, and
 14 without going into conversation between me and my
 15 counsel, I say again, we did an analysis and had
 16 discussions regarding potential claims and defenses
 17 that could be asserted, the potential length of time
 18 it would take and the significant cost that might be
 19 incurred by the City.

20 Q. I'm going to move on.

21 A. Okay. Sure.

22 Q. Did the City obtain approval from the Michigan
 23 Department of Treasury for the COPs or the Swap
 24 obligations, do you know?

25 A. You mean initially?

1 mentioned the lodestar analysis, one of my favorite
 2 friends. Did you have a lodestar analysis done for
 3 litigation with the Swap counterparties?

4 MR. SHUMAKER: Objection, this is getting
 5 into the -- the specific communications between
 6 Mr. Orr and his counsel when you start to go through
 7 what -- what are the particulars of the advice that
 8 was being given. I allowed you to go forward with
 9 whether he considered the length of litigation in his
 10 answer, but I don't want him to go into the specifics
 11 of any sort of analysis that was done by counsel.

12 With that admonition, you can answer.

13 A. Again, without going to the specifics of discussion
 14 I've had with counsel, there were discussions about
 15 potential length of litigation and appeals and the
 16 potential cost. Those discussions included time that
 17 may have impaired my ability to complete my obligation
 18 within the time frame provided by Public Act 436, as
 19 well as significant costs, litigation cost being
 20 incurred by the City.

21 BY MS. ENGLISH:

22 Q. Okay. Here is my question again, because in your
 23 answer you mentioned lodestar analysis, so I'm just
 24 asking -- it's a yes or no question.

25 A. Um-hm.

1 Q. Yeah.

2 A. I don't know. Well, wait a minute. Wait a minute.
 3 I recall seeing a letter some time ago on
 4 official Michigan State letterhead -- well, I recall
 5 seeing a letter. It may have been some form related
 6 to the COPs. I just don't remember specifically, but
 7 I do recall seeing a letter on Michigan letterhead
 8 related to the transaction.

9 Q. Okay. So I'm going to put in a request to your
 10 counsel.

11 MS. ENGLISH: If there is an approval or a
 12 letter from the Michigan Department of Treasury with
 13 respect to the COPs or the Swaps, we'd like to request
 14 a copy of that.

15 MR. SHUMAKER: We'll look into it.

16 MS. ENGLISH: Thanks.

17 BY MS. ENGLISH:

18 Q. Here's another one I don't know if you know the answer
 19 to this.

20 A. Right.

21 Q. Do you know if the City approved the offering circular
 22 that went out with respect to the COPs?

23 A. I do not.

24 Q. You mentioned earlier that you were on conference
 25 calls with Ken Buckfire and the principals of the Swap

<p style="text-align: right;">Page 289</p> <p>1 counterparties? 2 A. Yes. 3 Q. Did you -- on any of those calls, did you ever take 4 the position that the Swaps were invalid or void? 5 A. I don't recall if we had any discussions of that 6 nature on any of those calls. 7 Q. Do you recall whether you ever took the position that 8 the liens were invalid or not secured? 9 A. Likewise, I don't recall if we had discussions of that 10 nature on those calls.</p> <p>11 Q. Do you recall whether you ever discussed with any of 12 the Swap counterparties the City's potential legal 13 arguments as against the Swap counterparties?</p> <p>14 A. Did I? 15 Q. Yeah. 16 (Whereupon Robert Hertzberg left the 17 deposition at 2:49 p.m.)</p> <p>18 A. No, I don't think I had though those discussions. No. 19 BY MS. ENGLISH:</p> <p>20 Q. Did you ever debate the validity of the Swap 21 counterparties secured position with anyone from the 22 Swap counterparties? 23 A. Did I personally? 24 Q. Yes. 25 A. No.</p>	<p style="text-align: right;">Page 291</p> <p>1 which is really just one table on two pages, right? 2 A. Right. 3 Q. And -- 4 A. Well, let me make sure. Yes. 5 Q. You know what, so there's ECF numbers at the bottom -- 6 A. Yes. 7 Q. -- but there's also numbers in the -- that were part 8 of the original document and it's the original numbers 9 that I'm looking for, page 97 and 98. 10 A. Okay. 11 Q. On the top it says restructuring scenario. 12 A. Okay. I'm sorry, I was looking at the electronic case 13 number. - 14 Q. Yeah, my bad. 15 A. 97 and 98. Here we go. Okay. 16 Q. Okay. Now, if I understand this table that spans 17 pages 97 and 98 correctly, this is the City's 18 restructuring proposal, if you will; is that correct? 19 A. Yes. 20 (Whereupon Robert Hertzberg entered the 21 deposition at 2:51 p.m.) 22 BY MS. ENGLISH: 23 Q. Okay. And if we just look down say the column for 24 2014, we've got total revenues, net operating surplus, 25 readjustment expenses. And then if you go to page 98,</p>
<p style="text-align: right;">Page 290</p> <p>1 Q. I want to show you a document you're very familiar 2 with. 3 A. Um-hm. 4 Q. So what exhibit are we up to now? Exhibit 6? 5 A. Yeah. 6 Q. Orr 6? 7 A. Yes. 8 MS. ENGLISH: Lally, can you pass me my 9 binder? 10 MARKED FOR IDENTIFICATION: 11 DEPOSITION EXHIBIT 6 12 2:50 p.m. 13 BY MS. ENGLISH: 14 Q. Okay. You recognize this document, don't you, 15 Mr. Orr? 16 A. Yes. I assume it's an accurate representation of my 17 June 14th proposal to creditors. 18 Q. Okay. And this is a document that you put together 19 largely, with help I'm sure, but you were responsible 20 for putting this together, right? 21 A. This is a document that I and my team put together. 22 Q. Okay. I'd like you to turn to pages 97 and 98 of the 23 document. 24 A. Yes. 25 Q. Okay. These are -- there's two forecast tables here</p>	<p style="text-align: right;">Page 292</p> <p>1 we get down to a list of secured claims of the City. 2 A. Yes. 3 Q. Okay. 4 (Whereupon Kelly DiBlasi left the 5 deposition at 2:52 p.m.) 6 BY MS. ENGLISH: 7 Q. And there's a line item there for POC Swaps. Do you 8 see that? 9 A. Yes. 10 Q. And that line item is actually the Swaps we're talking 11 about today that you proposed to settle through the 12 forbearance agreement, correct? 13 A. Yes. 14 Q. Okay. And that line item, if you go right straight 15 across, shows roughly 50 million dollars a year being 16 paid; is that right? 17 A. Yes. 18 Q. So this restructuring proposal, if I'm reading this 19 correctly, is assuming that the City is going to 20 continue to pay its monthly Swap payments; is that 21 correct? 22 A. Yes. I think there's a footnote there at the top that 23 says -- at the bottom, it says, "Assumes continued 24 payments as scheduled. Treatment to be determined." 25 Q. Okay. So this restructuring proposal then -- well,</p>